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Postal Service

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Revised as of July 1, 1990

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Cite this Code: CFR

To cite the regulations in this volume use title, part and section number. Thus, 39 CFR 1.1 *refers to title 39, part 1, section 1.*

Explanation

The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

ISSUE DATES

Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

Title 1 through Title 16	as of January 1
Title 17 through Title 27	as of April 1
Title 28 through Title 41	as of July 1
Title 42 through Title 50	as of October 1

The appropriate revision date is printed on the cover of each volume.

LEGAL STATUS

The contents of the Federal Register are required to be judicially noticed (44 U.S.C. 1507). The Code of Federal Regulations is prima facie evidence of the text of the original documents (44 U.S.C. 1510).

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The Code of Federal Regulations is kept up to date by the individual issues of the Federal Register. These two publications must be used together to determine the latest version of any given rule.

To determine whether a Code volume has been amended since its revision date (in this case, July 1, 1990), consult the "List of CFR Sections Affected (LSA)," which is issued monthly, and the "Cumulative List of Parts Affected," which appears in the Reader Aids section of the daily Federal Register. These two lists will identify the Federal Register page number of the latest amendment of any given rule.

EFFECTIVE AND EXPIRATION DATES

Each volume of the Code contains amendments published in the Federal Register since the last revision of that volume of the Code. Source citations for the regulations are referred to by volume number and page number of the Federal Register and date of publication. Publication dates and effective dates are usually not the same and care must be exercised by the user in determining the actual effective date. In instances where the effective date is beyond the cut-off date for the Code a note has been inserted to reflect the future effective date. In those instances where a regulation published in the Federal Register states a date certain for expiration, an appropriate note will be inserted following the text.

OMB CONTROL NUMBERS

The Paperwork Reduction Act of 1980 (Pub. L. 96-511) requires Federal agencies to display an OMB control number with their information collection request. Many agencies have begun publishing numerous OMB control numbers as amendments to existing regulations in the CFR. These OMB numbers are placed as close as possible to the applicable recordkeeping or reporting requirements.

OBSOLETE PROVISIONS

Provisions that become obsolete before the revision date stated on the cover of each volume are not carried. Code users may find the text of provisions in effect on a given date in the past by using the appropriate numerical list of sections affected. For the period before January 1, 1973, consult either the List of CFR Sections Affected, 1949-1963, or 1964-1972, published in three separate volumes. For the period beginning January 1, 1973, a "List of CFR Sections Affected" is published at the end of each CFR volume.

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What is incorporation by reference? Incorporation by reference was established by statute and allows Federal agencies to meet the requirement to publish regulations in the Federal Register by referring to materials already published elsewhere. For an incorporation to be valid, the Director of the Federal Register must approve it. The legal effect of incorporation by reference is that the material is treated as if it were published in full in the Federal Register (5 U.S.C. 552(a)). This material, like any other properly issued regulation, has the force of law.

What is a proper incorporation by reference? The Director of the Federal Register will approve an incorporation by reference only when the requirements of 1 CFR Part 51 are met. Some of the elements on which approval is based are:

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(b) The matter incorporated is in fact available to the extent necessary to afford fairness and uniformity in the administrative process.

(c) The incorporating document is drafted and submitted for publication in accordance with 1 CFR Part 51.

Properly approved incorporations by reference in this volume are listed in the Finding Aids at the end of this volume.

What if the material incorporated by reference cannot be found? If you have any problem locating or obtaining a copy of material listed in the Finding Aids of this volume as an approved incorporation by reference, please contact the agency that issued the regulation containing that incorporation. If, after contacting the agency, you find the material is not available, please notify the Director of the Federal Register, National Archives and Records Administration, Washington DC 20408, or call (202) 523-4534.

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A subject index to the Code of Federal Regulations is contained in a separate volume, revised annually as of January 1, entitled CFR Index and Finding Aids. This volume contains the Parallel Table of Statutory Authorities and Agency Rules (Table I), and Acts Requiring Publication in the Federal Register (Table

III). A list of CFR Titles, Chapters, and Parts and an alphabetical list of agencies publishing in the CFR are also included in this volume.

An index to the text of "Title 3—The President" is carried within that volume.

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A List of CFR Sections Affected (LSA) is published monthly, keyed to the revision dates of the 50 CFR titles.

REPUBLICATION OF MATERIAL

There are no restrictions on the republication of material appearing in the Code of Federal Regulations.

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For a summary, legal interpretation, or other explanation of any regulation in this volume, contact the issuing agency. Inquiries concerning editing procedures and reference assistance with respect to the Code of Federal Regulations may be addressed to the Director, Office of the Federal Register, National Archives and Records Administration, Washington, D.C. 20408 (telephone 202-523-3517). Sales are handled exclusively by the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402 (telephone 202-783-3238).

Martha L. Girard,
Director,
Office of the Federal Register.

July 2, 1990.

THIS TITLE

Title 39—Postal Service is composed of one volume. The contents of this volume represent all current regulations codified under this title of the CFR as of July 1, 1990.

For Chapter I—United States Postal Service, the "Domestic Mail Manual", the "Postal Service Publication 42, International Mail" and the "Postal Contracting Manual, U.S. Postal Service Publication 41" are incorporated by reference. For Federal Register documentation, see the Material Approved for Incorporation by Reference in the Finding Aids section of this volume.

A redesignation table appears in the Finding Aids section of this volume.

For this volume, Sheli Fleming, Chief Editor. The Code of Federal Regulations publication program is under the direction of Richard L. Claypoole, assisted by Alomha S. Morris.

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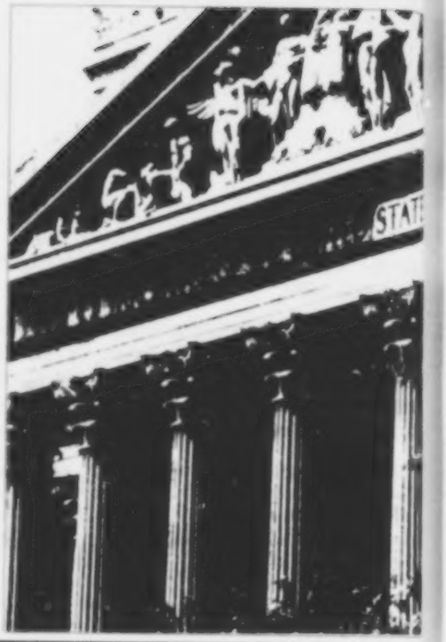

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Title 39—Postal Service

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CHAPTER I—UNITED STATES POSTAL SERVICE

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SUBCHAPTER A—THE BOARD OF GOVERNORS OF THE U.S. POSTAL SERVICE

Bylaws of the Board of Governors

PART 1—POSTAL POLICY [ARTICLE I]

Sec.
1.1 The U.S. Postal Service.
1.2 The Board of Governors.
1.3 Delegation of authority.
1.4 Open meetings.

AUTHORITY: 39 U.S.C. 101, 202, 205, 401(2), 402, 403, 3621, as enacted by Pub. L. 91-375, and 5 U.S.C. 552b(b), (g), as enacted by Pub. L. 94-409.

SOURCE: 42 FR 12859, Mar. 7, 1977, unless otherwise noted.

§ 1.1 The U.S. Postal Service.

The U.S. Postal Service is operated as a fundamental service provided to the people by the Government of the United States, authorized by the Constitution, created by Act of Congress, and supported by the people. The Postal Service has as its basic function the obligation to bind the Nation together through the correspondence of the people. It is charged with providing prompt, reliable, and efficient services throughout the Nation; and its statutory charter, the Postal Reorganization Act (the Reorganization Act) of August 12, 1970, Pub. L. 91-375, 84 Stat. 719, clothes it with extensive powers intended to enable it to carry out its responsibilities effectively and economically.

§ 1.2 The Board of Governors.

The Board of Governors of the Postal Service (the Board) directs the exercise of its powers under management that is expected to be honest, efficient, and economical. The Board consists of nine Governors chosen by the President, by and with the advice and consent of the Senate, to represent the public interest generally, together with the Postmaster General and Deputy Postmaster General. The Board directs and controls the expenditures of the Postal Service, reviews its practices and policies, and establishes basic objectives and long-range goals in consonance with the provisions of the Postal Reorganization Act.

§ 1.3 Delegation of authority.

Except for powers, duties, or obligations specifically vested in the Governors by law, the Board may delegate its authority to the Postmaster General under such terms, conditions, and limitations, including the power of redelegation, as it finds desirable. The bylaws of the Board are the framework of the system through which the Board monitors the exercise of the authority it has delegated, measures progress toward the goals it has set, and shapes the policies to guide the future development of the Postal Service. Delegations of authority do not relieve the Board of full responsibility for carrying out its duties and functions, and are revocable by the Governors in their exclusive judgment.

§ 1.4 Open meetings.

It is the policy of the United States, established in section 2 of the Government in the Sunshine Act, Pub. L. 94-409, 90 Stat. 1241, that the public is entitled to the fullest practicable information regarding the decisionmaking processes of the Federal Government. The Postal Service is charged to provide the public with this information while protecting the rights of individuals and the ability of the Government to carry out its responsibilities. Accordingly, except as specifically permitted by statute, every portion of every meeting of the Board of Governors, or of a subdivision of the Board authorized to act on its behalf, is open to public observation.

PART 2—GENERAL AND TECHNICAL PROVISIONS [ARTICLE II]

Sec.
2.1 Establishment of the U.S. Postal Service.
2.2 Agent for receipt of process.
2.3 Offices.
2.4 Seal.
2.5 Authority.
2.6 Severability, amendment, repeal, and waiver of bylaws

AUTHORITY: 39 U.S.C. 202, 203, 205(c), 207, 401(2), as enacted by Pub. L. 91-375, and 5 U.S.C. 552b(f), (g), as enacted by Pub. L. 94-409.

SOURCE: 42 FR 12859, Mar. 7, 1977, unless otherwise noted.

§ 2.1 Establishment of the U.S. Postal Service.

The U.S. Postal Service is established under the provisions of the Postal Reorganization Act, as an independent establishment of the executive branch of the Government of the United States, under the direction of a Board of Governors, with the Postmaster General as its chief executive officer.

§ 2.2 Agent for receipt of process.

The General Counsel of the Postal Service shall act as agent for the receipt of legal process against the Postal Service, and as agent for the receipt of legal process against members of the Board of Governors and all other officers and employees of the Postal Service to the extent that the process arises out of the official functions of those officers and employees. The General Counsel shall also issue public certifications concerning closed meetings of the Board as appropriate under 5 U.S.C. 552b(f).

(39 U.S.C. 401(2), 402)

[46 FR 34329, July 1, 1981, as amended at 46 FR 40876, Aug. 13, 1981]

§ 2.3 Offices.

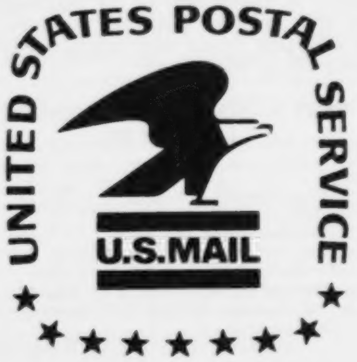
The principal office of the Postal Service is located in Washington, D.C., with such regional and other offices and places of business as the Postmaster General establishes from time to time, or the business of the Postal Service requires.

§ 2.4 Seal.

(a) The Seal of the Postal Service is filed by the Board in the Office of the Secretary of State, and is required by 39 U.S.C. 207 to be judicially noticed. The Seal shall be in the custody of the General Counsel, who shall affix it to all commissions of officers of the Postal Service, and use it to authenticate records of the Postal Service and for other official purposes. The following describes the Seal adopted for the Postal Service:

(1) A stylized bald eagle is poised for flight, facing to the viewer's right, above two horizontal bars between which are the words "U.S. MAIL", surrounded by a square border with rounded corners consisting of the words "UNITED STATES POSTAL SERVICE" on the left, top, and right, and consisting of nine five-pointed stars on the base.

(2) The color representation of the Seal shows, a white field on which the bald eagle appears in dark blue, the words "U.S. MAIL" in black, the bar above the words in red, the bar below in blue, and the entire border consisting of the words "UNITED STATES POSTAL SERVICE" and stars in ochre.



(b) The Postal Service emblem, which is identical with the seal, is registered as a trademark and service mark by the U.S. Patent Office. Except for the emblem on official stationery, the emblem must bear one of the following notations: "Reg. U.S. Pat. Off.", "Registered in U.S. Patent Office", or the letter R enclosed within a circle.

(39 U.S.C. 202, 205, 401 (2), (10), 1003, 3013)

[42 FR 12859, Mar. 7, 1977, as amended at 49 FR 7229, Feb. 28, 1984]

§ 2.5 Authority.

These bylaws are adopted by the Board under the authority conferred upon the Postal Service by 39 U.S.C. 401(2) and 5 U.S.C. 552b(g).

§ 2.6 Severability, amendment, repeal, and waiver of bylaws.

The invalidity of any provision of these bylaws does not affect the validity of the remaining provisions, and for this purpose these bylaws are severable. The Board may amend or repeal these bylaws at any special or regular meeting, provided that each member of the Board has received a written notice containing a statement of the proposed amendment or repeal at least 5 days before the meeting. The members of the Board may waive the 5 days' notice or the operation of any other provision of these bylaws by unanimous consent, if that action is not prohibited by law. The Secretary shall submit the text of any amendment to these bylaws for publication in the FEDERAL REGISTER as soon as practicable after the amendment is adopted by the Board.

PART 3—BOARD OF GOVERNORS [ARTICLE III]

Sec.

3.1 Composition of Board.
3.2 Reponsibilities of Board.
3.3 Compensation of Board.
3.4 Matters reserved for decision by the Board.
3.5 Delegation of authority by Board.
3.6 Information furnished to Board—statistical reports.
3.7 Information furnished to Board—program review.
3.8 Information furnished to Board—special reports.
3.9 Office of the Board of Governors.

AUTHORITY: 39 U.S.C. 202, 203, 205, 401(2), (10), 402, 1003, 3013; 5 U.S.C. 552b (g),)(j).

SOURCE: 42 FR 12860, Mar. 7, 1977, unless otherwise noted.

§ 3.1 Composition of Board.

The Board of Governors consists of 11 members. Nine members (the Governors) are appointed by the President, by and with the advice and consent of the Senate. Not more than five Governors may be adherents of the same political party. The Governors are chosen to represent the public interest generally, may not be representatives of specific interests using the Postal Service, and may be removed only for cause. The Postmaster General, appointed by the nine Governors, and the Deputy Postmaster General, appointed by the Governors and the Postmaster General, are also voting members of the Board of Governors.

§ 3.2 Responsibilities of Board.

The Board directs the exercise of the powers of the Postal Service, reviews the practices and policies of the Postal Service, and directs and controls the expenditures of the Postal Service. Consistent with the broad delegation of authority to the Postmaster General in § 3.5 of these bylaws, and except for those powers, duties, or obligations which the Reorganization Act specifically vests in the Governors, as distinguished from the Board of Governors, the Board accomplishes its purposes by monitoring the operations and performance of the Postal Service, and by establishing basic objectives, broad policies, and long-range goals for the Postal Service.

§ 3.3 Compensation of Board.

As provided by 39 U.S.C. 202(a), each Governor receives a salary of $10,000 a year plus $300 a day for not more than 42 days of meetings each year, and reimbursement for travel and reasonable expenses incurred in attending meetings of the Board.

[42 FR 12860, Mar. 7, 1977, as amended at 54 FR 42301, Oct. 16, 1989]

§ 3.4 Matters reserved for decision by the Board.

The following matters are reserved for decision by the Board of Governors:

(a) Appointment, pay, term of service, and removal of the Postmaster General (by the Governors, 39 U.S.C. 202(c)).

(b) Appointment, term of service, and removal of the Deputy Postmaster General (by the Governors and the Postmaster General, 39 U.S.C. 202(d)); pay of the Deputy Postmaster General (by the Governors, 39 U.S.C. 202(d)).

(c) Election of the Chairman of the Board of Governors (by the Governors, 39 U.S.C. 202 (a)), the Vice Chairman of the Board, and the appointment of the Secretary of the Board.

(d) Adoption of, and amendments to, the bylaws of the Board.

(e) Approval of the annual Postal Service budget program in both tentative and final form, including requests for appropriations.

(f) Approval of the annual financial statements of the Postal Service following receipt of the annual report of the Postal Service's independent, certified public accounting firm.

(g) Approval of the Postal Service Five-Year Capital Investment Plans, including specific approval of each capital investment project, each new lease/rental agreement, and each research and development project exceeding $10 million total external costs. In the case of any project or agreement subject to the requirement of Board approval under this provision, the expenditure of any funds in excess of the amount previously authorized by the Board must be specifically approved by the Board. For the purpose of determining the cost of a capital investment project, lease rental agreement, or research and development project,

(1) All such projects and agreements undertaken as part of a unitary plan (either for contemporaneous or sequential development in one of several locations) shall be considered one project or agreement, and

(2) The cost of a lease/rental agreement shall be the present value of all lease payments over the term of the lease, including all periods covered by renewal options or all periods for which failure to renew imposes a penalty or a hardship such that renewal appears to be reasonably assured, plus the cost of any leasehold improvements planned in connection with the lease/rental agreement. The present value will be determined using the cost of capital of the Postal Service.

(h) Approval of the budget of the Postal Rate Commission, or adjustment of the total amount of the budget (by unanimous written vote of the Governors in office, 39 U.S.C. 3604(d)).

(i) Authorization of the Postal Service to request the Postal Rate Commission to submit a recommended decision on changes in postal rates.

(j) Authorization of the Postal Service to request the Postal Rate Commission to submit a recommended decision on changes in the mail classification schedule.

(k) Action upon a recommended decision of the Postal Rate Commission, including action to approve, allow under protest, reject, or modify that decision (by the Governors, 39 U.S.C. 3625); determination of an effective date for changes in postal rates or mail classification.

(l) Authorization of the Postal Service to request the Postal Rate Commission to submit an advisory opinion on a proposed change in the nature of postal services which will generally affect service on a nationwide or substantially nationwide basis.

(m) Approval of any use of the authority of the Postal Service to borrow money under 39 U.S.C. 2005, except for short-term "line of credit" borrowings and purchase money obligations assumed in the normal course of business.

(n) Approval of the terms and conditions of each issue of obligations by the Postal Service under 39 U.S.C. 2005, including the time and manner of sale and the underwriting arrangements.

(o) Approval of any use of the authority of the Postal Service to require the Secretary of the Treasury to purchase Postal Service obligations under 39 U.S.C. 2006(b), or to request the Secretary of the Treasury to pledge the full faith and credit of the Government of the United States for the payment of principal and interest on Postal Service obligations under 39 U.S.C. 2006(c).

(p) Determination of the number of Assistant Postmasters General, including the Associate Postmasters General, Senior Assistant Postmasters General and Regional Postmasters General.

(q) Compensation of officers of the Postal Service whose positions are included in Level II of the Postal Career Executive Service, including the Associate Postmasters General, the Senior Assistant Postmasters General, Assistant Postmasters General, Regional

Postmasters General, General Counsel, Deputy General Counsel, Chief Postal Inspector, Controller, Treasurer, Consumer Advocate, Executive Assistant to the Postmaster General, and Judicial Officer. (For new appointments to officer positions, the Postmaster General shall furnish written information to the Board on candidates for appointment reasonably in advance of any request for a Board decision under this paragraph.)

(r) Selection of an independent, certified public accounting firm to certify the accuracy of Postal Service financial statements as required by 39 U.S.C. 2008(e).

(s) Approval of official statements adopting major policy positions or departing from established major policy positions, and of official positions on legislative proposals having a major impact on the Postal Service.

(t) Approval of all major policy positions taken with the Department of Justice on petitioning the Supreme Court of the United States for writs of certiorari.

(u) Approval and transmittal to the President and the Congress of the annual report of the Postmaster General under 39 U.S.C. 2402.

(v) Approval and transmittal to the Congress of the annual report of the Board under 5 U.S.C. 552b(j).

(w) Approval of the annual comprehensive statement of the Postal Service to Congress under 39 U.S.C. 2401(g).

(x) Approval and transmittal to the Congress of the semi-annual report of the Postmaster General under 39 U.S.C. 3013, summarizing the investigative activities of the Postal Service.

(y) Concurrence of the Governors with the Postmaster General in the removal or transfer of the Chief Postal Inspector under 5 U.S.C. App. 8E(f).

(z) All other matters that the Board may consider appropriate to reserve for its decision.

[42 FR 12860, Mar. 7, 1977, as amended at 44 FR 30686, May 29, 1979; 47 FR 56495, Dec. 17, 1982; 49 FR 7229, Feb. 28, 1984; 50 FR 29381, July 19, 1985; 51 FR 9791, Mar. 21, 1986; 51 FR 18323, May 19, 1986; 54 FR 42301, Oct. 16, 1989]

§ 3.5 Delegation of authority by Board.

As authorized by 39 U.S.C. 402, these bylaws delegate to the Postmaster General the authority to exercise the powers of the Postal Service to the extent that this delegation of authority does not conflict with powers reserved to the Governors or to the Board by law, these bylaws, or resolutions adopted by the Board. Any of the powers delegated to the Postmaster General by these bylaws may be redelegated by the Postmaster General to any officer, employee, or agency of the Postal Service.

[49 FR 7229, Feb. 28, 1984]

§ 3.6 Information furnished to Board—statistical reports.

To enable the Board to monitor the operations and performance of the Postal Service during the most recent accounting periods for which data are available, postal management shall furnish the Board the following statistical reports at least quarterly:

(a) Detailed summaries of financial and operating statements of the Postal Service, with balance sheet information, for each accounting period during the fiscal year to date, together with comparable figures for the previous year and for the current budget plan, categorized as:

(1) Income (revenue by principal mail classification, subsidies, and reimbursements); and

(2) Expenditures (expenses by function and by unit of organization).

(b) Performance data for the most recent quarter, categorized as:

(1) Service performance measurement (by particular classes and types of mail, and showing delivery times within representative distances); and

(2) Employee productivity measurement (reflecting paid work hours and mail volume).

§ 3.7 Information furnished to Board—program review.

(a) To enable the Board to review the Postal Service operating program, postal management shall furnish the Board information on all aspects of the Postal Service budget plan, including:

(1) The tentative and final annual budgets submitted to the Office of Management and Budget and the Congress, and amendments to the budget;

(2) Five-year plans, annual operating and investment plans, and significant departures from estimates upon which the plans were based;

(3) The need for rate increases or decreases and the progress of any pending rate cases and related litigation; and

(4) Debt financing needs, including a review of all borrowings of the Postal Service from the U.S. Treasury and private sources.

(b) To enable the Board to review the effectiveness of the Postal Service's equal employment opportunity program, performance data relating to this program shall be furnished to the Board at least quarterly. This data shall be categorized in such manner as the Board, from time to time, specifies.

(c) Postal management shall also regularly furnish the Board information regarding major programs for improving postal service or reducing the cost of postal operations.

[42 FR 12860, Mar. 7, 1977, as amended at 47 FR 56496, Dec. 17, 1982; 51 FR 18323, May 19, 1986; 54 FR 42301, Oct. 16, 1989]

§ 3.8 Information furnished to Board—special reports.

To insure that the Board receives significant information of developments meriting its attention, postal management shall bring to the Board's attention the following matters:

(a) Major developments in personnel areas, including but not limited to equal employment opportunity, career development and training, and grade and salary structures.

(b) Major litigation activities. Postal management shall also notify the Board in a timely manner whenever it proposes to seek review by any United States Court of Appeals of an adverse judicial decision.

(c) Any significant changes proposed in the Postal Service's system of accounts or methods of accounting.

(d) Matters of special importance, including but not limited to important research and development initiatives, major changes in Postal Service organization or structure, major law enforcement activities, and other matters having a significant impact upon the relationship of the Postal Service with its employees, with any major branch of Government, or with the general public.

(e) Other matters having important policy implications.

[47 FR 56496, Dec. 17, 1982]

§ 3.9 Office of the Board of Governors.

There shall be located in Washington, D.C. an Office of the Board of Governors of the United States Postal Service. It shall be the function of this Office to provide staff support for the Board, as directed by the Chairman of the Board, to enable the Board to carry out effectively its duties under the Reorganization Act. To further assist the Board in discharging its responsibilities, the Office of the Board, upon the request of any Governor, shall provide for staff support at that Governor's place of work. Such on-site support shall be limited to those services directly relating to a Governor's duties under the Reorganization Act that cannot reasonably be performed at postal headquarters and shall be provided in the most efficient manner possible.

[47 FR 56496, Dec. 17, 1982]

PART 4—OFFICERS [ARTICLE IV]

Sec.

4.1 Chairman.
4.2 Vice Chairman.
4.3 Postmaster General.
4.4 Deputy Postmaster General.
4.5 Assistant Postmasters General, General Counsel, Judicial Officer.
4.6 Chief Postal Inspector
4.7 Secretary of the Board.

AUTHORITY: 39 U.S.C. 202, 203, 205, 401(2), (10), 1003, 3013.

SOURCE: 42 FR 12861, Mar. 7, 1977, unless otherwise noted.

§ 4.1 Chairman.

The Chairman of the Board of Governors is elected by the Governors from among the members of the Board. The Chairman:

(a) Shall preside at all regular and special meetings of the Board, and shall set the agenda for such meetings;

(b) Shall select and appoint the Chairman and members of any committee properly established by the Board;

(c) Serves a term that commences upon election and expires at the end of the first annual meeting following the meeting at which he or she was elected.

If the Postmaster General is elected Chairman of the Board, the Governors shall also elect one of their number to preside during proceedings dealing with matters upon which only the Governors may vote.

[42 FR 12861, Mar. 7, 1977, as amended at 47 FR 56496, Dec. 17, 1982; 49 FR 7229, Feb. 28, 1984]

§ 4.2 Vice Chairman.

The Vice Chairman is elected by the Board from among the members of the Board and shall perform the duties and exercise the powers of the Chairman during the Chairman's absence or disability. The Vice Chairman serves a term that commences upon election and expires at the end of the first annual meeting following the meeting at which he or she was elected.

[49 FR 7229, Feb. 28, 1984]

§ 4.3 Postmaster General.

The Governors appoint and have the power to remove the Postmaster General, who is a voting member of the Board. In addition to being a member of the Board, the Postmaster General is the chief executive officer of the Postal Service, authorized to exercise the powers of the Postal Service under the general supervision and direction of the Board. The Governors set the salary of the Postmaster General by resolution, subject to the limitations of 39 U.S.C. 1003(a).

[42 FR 12861, Mar. 7, 1977, as amended at 49 FR 7229, Feb. 28, 1984]

§ 4.4 Deputy Postmaster General.

The Governors and the Postmaster General appoint and have the power to remove the Deputy Postmaster General, who is a voting member of the Board. In addition to being a member of the Board, the Deputy Postmaster General is the alternate chief executive officer of the Postal Service and shall perform all tasks assigned by the Postmaster General. The Deputy Postmaster General shall act as Postmaster General during the Postmaster General's absence or disability, and when a vacancy exists in the office of Postmaster General. The Governors set the salary of the Deputy Postmaster General by resolution, subject to the limitations of 39 U.S.C. 1003(a).

[49 FR 7229, Feb. 28, 1984]

§ 4.5 Assistant Postmasters General, General Counsel, Judicial Officer.

There are within the Postal Service a General Counsel, a Judicial Officer, and such number of Assistant Postmasters General (including the Associate Postmasters General, Senior Assistant Postmasters General and Regional Postmasters General) as the Board authorizes by resolution. The Assistant Postmasters General, the General Counsel, and the Judicial Officer are appointed by, and serve at the pleasure of, the Postmaster General. Their powers and duties are delegated to them by the Postmaster General, consistent with these bylaws and the Reorganization Act.

[42 FR 12861, Mar. 7, 1977, as amended at 51 FR 18323, May 19, 1986; 54 FR 42301, Oct. 16, 1989]

§ 4.6 Chief Postal Inspector.

The Postmaster General, in consultation with the Governors, appoints the Chief Postal Inspector, certain of whose powers and duties are delegated to the holder of that office by the Postmaster General, consistent with these bylaws and the Reorganization Act. The Chief Postal Inspector also holds the position of Inspector General, and for purposes of the Inspector General Act of 1978, as amended by Public Law 100-504, 5 U.S.C App. 8E(f), reports to and is under the general supervision of the Postmaster General. The Postmaster General has the power, with the concurrence of the Governors, to remove or transfer the Chief Postal Inspector to another position or location within the Postal Service. In the event of any such removal or transfer, the Postmaster General must promptly notify both Houses of the Congress in writing of the reasons for such removal or transfer.

[54 FR 42301, Oct. 16, 1989]

§ 4.7 Secretary of the Board.

The Secretary of the Board of Governors is appointed by the Board and serves at the pleasure of the Board. The Secretary shall be responsible for carrying out the functions of the Office of the Board of Governors, under the direction of the Chairman of the Board. The Secretary shall also issue notices of meetings of the Board and its committees, keep minutes of these meetings, and monitor compliance with all statutes and regulations dealing with public observation of meetings. The Secretary shall perform all those duties incident to this office, including those duties assigned by the Board or by the Chairman of the Board. The Chairman may designate such assistant secretaries as may be necessary to perform any of the duties of the Secretary.

[47 FR 56496, Dec. 17, 1982. Redesignated at 54 FR 42301, Oct. 16, 1989]

PART 5—COMMITTEES [ARTICLE V]

Sec.
5.1 Establishment and appointment.
5.2 Committee procedure.
5.3 Compensation of members.

AUTHORITY: 39 U.S.C. 202, 203, 204, 205, 401(2), (10), 1003, 3013; 5 U.S.C. 552b (a), (b), (g).

§ 5.1 Establishment and appointment.

From time to time the Board may establish by resolution special and standing committees of one or more members of the Board. The Board shall specify, in the resolution establishing any committee, whether the committee is authorized to submit recommendations or preliminary decisions to the Board, to conduct hearings for the Board, or otherwise to take action on behalf of the Board. Each committee may exercise only those duties, functions, and powers prescribed from time to time by the Board, and the Board may affirm, alter, or revoke any action of any committee. Each member of the Board may have access to all of the information and records of any committee at any time. The Chairman of the Board shall appoint the chairman and members of each committee, who serve terms which expire at the end of each annual meeting. Each committee chairman may assign responsibilities to members of the committee that are considered appropriate. The committee chairman, or the chairman's designee, shall preside at all meetings of the committee.

[42 FR 12861, Mar. 7, 1977, as amended at 49 FR 7229, Feb. 28, 1984]

§ 5.2 Committee procedure.

Each committee establishes its own rules of procedure, consistent with these bylaws, and meets as provided in its rules. A majority of the members of a committee constitute a quorum, and may take action by majority vote of the members present. Except as specifically provided by statute, every portion of every meeting of every committee of more than one member, which is authorized to submit recommendations or preliminary decisions to the Board, to conduct hearings for the Board, or otherwise to take action on behalf of the Board, is open to public observation, and is subject to the requirements of §§ 7.1 through 7.8 of these bylaws.

[42 FR 12861, Mar. 7, 1977]

§ 5.3 Compensation of members.

A Governor receives compensation of $300 a day for attendance at committee meetings, and reimbursement for travel and reasonable expenses incurred in attending committee meetings. No Governor may receive compensation under this section and § 3.3 of these bylaws for more than a combination of 42 days of Board meetings and committee meetings in any year.

[42 FR 12861, Mar. 7, 1977, as amended at 54 FR 42302, Oct. 16, 1989]

PART 6—MEETINGS [ARTICLE VI]

Sec.
6.1 Regular meetings, annual meeting.
6.2 Special meetings.
6.3 Notice of meetings.
6.4 Attendance by conference telephone call.
6.5 Minutes of meetings.
6.6 Quorum and voting.

Authority: 39 U.S.C. 202, 205, 401(2), (10), 1003, 3013; 5 U.S.C. 552b (e), (g).

Source: 42 FR 12862, Mar. 7, 1977, unless otherwise noted.

§ 6.1 Regular meetings, annual meeting.

The Board shall meet regularly on the first Tuesday of each month. The first regular meeting of each calendar year is designated as the annual meeting. Consistent with the provisions of § 7.5 of these bylaws, the time or place of a regular or annual meeting may be varied by action of the Chairman, or by a recorded vote of a majority of the members of the Board, with the earliest practicable notice to the other members of the Board and to the Secretary. If the Chairman varies the time or place of a meeting, he shall give not less than 8 days' notice to the other members of the Board and to the Secretary. The Secretary shall distribute to the members an agenda setting forth the proposed subject matter for any regular or annual meeting in advance of the meeting.

[47 FR 56496, Dec. 17, 1982]

§ 6.2 Special meetings.

Consistent with the provisions of § 7.5 of these bylaws, the Chairman may call a special meeting of the Board at any place in the United States, with not less than 8 nor more than 30 days' notice to the other members of the Board and to the Secretary, specifying the time, date, place, and subject matter of the meeting. By recorded vote a majority of the members of the Board may call a special meeting of the Board at any place in the United States, with the earliest practicable notice to the other members of the Board and to the Secretary, specifying the time, date, place and subject matter of the meeting.

§ 6.3 Notice of meetings.

The Chairman or the members of the Board may give the notice required under § 6.1 or § 6.2 of these bylaws in oral or written form. Oral notice to a member may be delivered by telephone and is sufficient if made to the member personally or to a responsible person in the member's home or office. Any oral notice to a member must be subsequently confirmed by written notice. Written notice to a member may be delivered by telegram or by mail sent by the fastest regular delivery method addressed to the member's address of record filed with the Secretary, and except for written notice confirming a previous oral notice, must be sent in sufficient time to reach that address at least 2 days before the meeting date under normal delivery conditions. A member waives notice of any meeting by attending the meeting, and may otherwise waive notice of any meeting at any time. Neither oral nor written notice to the Secretary is sufficient until actually received by the Secretary. The Secretary may not waive notice of any meeting.

[49 FR 7229, Feb. 28, 1984]

§ 6.4 Attendance by conference telephone call.

Unless prohibited by law or by these bylaws, a member of the Board may participate in a meeting of the Board by conference telephone or similar communication equipment which enables all persons participating in the meeting to hear each other and which permits full compliance with the provisions of these bylaws concerning public observation of meetings. Attendance at a meeting by this method constitutes presence at the meeting, except that no Governor may receive compensation for any meeting attended in this manner.

§ 6.5 Minutes of meetings.

The Secretary shall preserve the original minutes of Board meetings prepared under § 4.6 of these bylaws. After the minutes of any meeting are approved by the Board, the Secretary shall promptly make available to the public, in the Communications Department at Postal Service Headquarters, or in another place easily accessible to the public, copies of the minutes, except for those portions which contain information inappropriate for public disclosure under 5 U.S.C. 552(b) or 39 U.S.C. 410(c).

[42 FR 12862, Mar. 7, 1977, as amended at 54 FR 42302, Oct. 16, 1989]

§ 6.6 Quorum and voting.

As provided by 39 U.S.C. 205(c), the Board acts by resolution upon a majority vote of those members who are present. No proxies are allowed in any vote of the members of the Board. Any 6 members constitute a quorum for the transaction of business by the Board, except:

(a) In the appointment or removal of the Postmaster General, and in setting the compensation of the Postmaster General and Deputy Postmaster General, 39 U.S.C. 205(c)(1) requires a favorable vote of an absolute majority of the Governors in office;

(b) In the appointment or removal of the Deputy Postmaster General, 39 U.S.C. 205(c)(2) requires a favorable vote of an absolute majority of the Governors in office and the Postmaster General;

(c) In the adjustment of the total budget of the Postal Rate Commission, 39 U.S.C. 3604(c) requires a unanimous written vote of the Governors in office;

(d) In the modification of a recommended decision of the Postal Rate Commission, 39 U.S.C. 3625 requires a unanimous written vote of the Governors in office; and

(e) In the approval, allowance under protest, or rejection of a recommended decision of the Postal Rate Commission, the Governors act upon a majority vote of the Governors present, and the required quorum of 6 members must include at least 5 Governors;

(f) In the determination to close a portion of a meeting or to withhold information concerning a meeting, 5 U.S.C. 552b(d)(1) requires a vote of a majority of the entire membership of the Board; and

(g) In the decision to call a meeting with less than a week's notice, 5 U.S.C. 552b(e)(1) requires a vote of a majority of the members of the Board. In the decision to change the subject matter of a meeting, or the determination to open or close a meeting, 5 U.S.C. 552b(e)(2) requires a vote of a majority of the entire membership of the Board.

PART 7—PUBLIC OBSERVATION [ARTICLE VII]

Sec.
7.1 Definitions.
7.2 Open meetings required.
7.3 Exceptions.
7.4 Procedure for closing a meeting.
7.5 Public notice of meetings, subsequent changes.
7.6 Certification and transcripts of closed meetings.
7.7 Enforcement.
7.8 Open meetings, Freedom of Information, and Privacy of Information.

AUTHORITY: 39 U.S.C. 401(a), as enacted by Pub. L. 91-375, and 5 U.S.C. 552b(a)–(m) as enacted by Pub. L. 94-409.

SOURCE: 42 FR 12862, Mar. 7, 1977, unless otherwise noted.

§ 7.1 Definitions.

For purposes of §§ 7.2 through 7.8 and 8.1 of these bylaws:

(a) The term "Board" means the Board of Governors, and any subdivision or committee of the Board authorized under § 5.1 of these bylaws to submit recommendations or preliminary decisions to the Board, to conduct hearings for the Board, or otherwise to take action on behalf of the Board.

(b) The term "meeting" means the deliberations of at least the number of individual members required to take action on behalf of the Board under § 5.2 or § 6.5 of these bylaws, where such deliberations determine or result in the joint conduct or disposition of the official business of the Board. The term "meeting" does not include any procedural deliberations required or permitted by §§ 6.1, 6.2, 7.4, or § 7.5 of these bylaws.

§ 7.2 Open meetings required.

(a) Except as provided in § 7.3 of these bylaws, every portion of every meeting of the Board is open to public observation. Members of the Board may not jointly conduct or dispose of business of the Board without complying with §§ 7.2 through 7.8 of these bylaws. Members of the public may obtain access to documents considered at meetings to the extent provided in the regulations of the Postal Service concerning the release of information.

(b) Without the permission of the Board, no person may participate in, film, televise, or broadcast any portion of any meeting of the Board. Any person may electronically record or photograph a meeting, as long as that action does not tend to impede or disturb the members of the Board in the performance of their duties, or members of the public while attempting to attend or observe a meeting of the Board. The rules and penalties of 39 CFR 232.6, concerning conduct on postal property, apply with regard to meetings of the Board.

§ 7.3 Exceptions.

Section 7.2 of these bylaws does not apply to a portion of a meeting, and §§ 7.4 and 7.5 do not apply to information concerning the meeting which otherwise would be required to be disclosed to the public, if the Board properly determines that the public interest does not require otherwise, and that such portion of the meeting or the disclosure of such information is likely to:

(a) Disclose matters that are (1) specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign policy, and (2) in fact properly classified under that Executive order;

(b) Relate solely to the internal personnel rules and practices of the Postal Service, including the Postal Service position in negotiations or consultations with employee organizations.

(c) Disclose matters specifically exempted from disclosure by statute (other than the Freedom of Information Act, 5 U.S.C. 552), provided that the statute (1) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (2) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(d) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential, such as market information pertinent to Postal Service borrowing or investments, technical or patent information related to postal mechanization, or commercial information related to purchases of real estate;

(e) Involve accusing any person of a crime, or formally censuring any person;

(f) Disclose information of a personal nature, such as personal or medical data regarding an individual under consideration for appointment to a Postal Service office, if disclosure would constitute a clearly unwarranted invasion of personal privacy;

(g) Disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in those records, but only to the extent that the production of those records or information would (1) interfere with enforcement proceedings, (2) deprive a person of a right to a fair trial or an impartial adjudication, (3) constitute an unwarranted invasion of personal privacy, (4) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (5) disclose investigative techniques and procedures, or (6) endanger the life or physical safety of law enforcement personnel;

(h) Disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

(i) Disclose information the premature disclosure of which would be likely significantly to frustrate implementation of a proposed action of the Board, such as information relating to the negotiation of a labor contract or proposed Postal Service procurement activity, except that this provision does not apply in any instance where (1) the Postal Service has already disclosed to the public the content or nature of the proposed action, or (2) the Postal Service is required by law to make such disclosure on its own initiative before taking final action on the proposal; or

(j) Specifically concern the issuance of a subpoena by the Postal Service, or the participation of the Postal Service in a civil action or proceeding, such as a postal rate or classification proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the Postal Service of a particular case of formal adjudication under the procedures of 5 U.S.C. 554 or otherwise involving a determination on the record after opportunity for a hearing.

§ 7.4 Procedure for closing a meeting.

(a) A majority of the entire membership of the Board may vote to close a portion of a meeting or to withhold information concerning a meeting under the provisions of § 7.3 of these bylaws. The members shall take a separate vote with respect to each meeting a portion of which is proposed to be closed to the public, or with respect to any information which is proposed to be withheld, and shall make every reasonable effort to take any such vote at least 8 days before the date of the meeting involved. The members may take a single vote with respect to a series of meetings, portions of which are proposed to be closed to the public, or with respect to information concerning the series, so long as each portion of a meeting in the series involves the same particular matters, and no portion of any meeting is scheduled to be held more than 30 days after the initial portion of the first meeting in the series.

(b) Whenever any person whose interest may be directly affected by a portion of a meeting requests that the Board close that portion to the public for any of the reasons referred to in § 7.3 (e), (f), or (g) of these bylaws, upon request of any one of its members the Board shall vote by recorded vote whether to close that portion of the meeting.

(c) The Secretary shall record the vote of each member participating in a vote under paragraph (a) or (b) of this section. Within 1 day of any vote under paragraph (a) or (b) of this section, the Secretary shall make publicly available a written copy of the vote showing the vote of each member on the question. If a portion of a meeting is to be closed to the public, the Secretary shall, within 1 day of the vote, make publicly available a full written explanation of the action closing the portion, together with a list of all persons expected to attend the meeting and their affiliation.

(d) If a committee of the Board determines that a majority of its meetings may properly be closed to the public for any combination of reasons referred to in § 7.3 (d), (h), or (j) of these bylaws, it may close a meeting or a portion of a meeting by a recorded vote of a majority of its members at the beginning of the meeting or portion in question. The Secretary shall promptly make available to the public a written copy of the vote showing the vote of each member on the question. Paragraphs (a), (b), and (c) of this section, and § 7.5 of these bylaws do not apply to any meeting or portion of a meeting closed under this subsection. However, at the earliest practicable time, the Secretary shall publicly announce the time, place, and subject matter of the meeting and each of its portions.

(e) Immediately following each public announcement required under paragraphs (c) and (d) of this section, the Secretary shall submit for publication in the FEDERAL REGISTER the text of the announcement or the information made available. The Secretary shall also submit the announcement or information to the Postal Service Public and Employee Communications Department for dissemination to the public.

§ 7.5 Public notice of meetings, subsequent changes.

(a) At least one week before any meeting of the Board, the Secretary shall publicly announce the time, date, place, and subject matter of the meeting, whether it is to be open or closed to the public, and the name and phone number of the official designated by the Board to respond to requests for information about the meeting.

(b) By a recorded vote, a majority of the members of the Board may determine that the business of the Board requires a meeting to be called with less than a week's notice. At the earliest practicable time, the Secretary shall publicly announce the time, date, place, and subject matter of the meeting, and whether it is to be open or closed to the public.

(c) Following the public announcement required by paragraphs (a) or (b) of this section:

(1) As provided in § 6.1 of these bylaws, the Board may change the time or place of a meeting. At the earliest practicable time, the Secretary shall publicly announce the change.

(2) A majority of the entire membership of the Board may change the subject matter of a meeting, or the determination to open or close a meeting to the public, if it determines by a recorded vote that the change is required by the business of the Board and that no earlier announcement of the change was possible. At the earliest practicable time, the Secretary shall publicly announce the change, and the vote of each member upon the change.

(d) Immediately following each public announcement required under paragraphs (a), (b), or (c) of this section, the Secretary shall submit for publication in the FEDERAL REGISTER a notice of the time, date, place, and subject matter of the meeting, whether the meeting is open or closed, any change in the preceding, and the name and phone number of the official designated by the Board to respond to requests for information about the meeting. The Secretary shall also submit the announcement and information to the Postal Service Public and Employee Communications Department for dissemination to the public.

§ 7.6 Certification and transcripts of closed meetings.

(a) At the beginning of every meeting or portion of a meeting closed under § 7.3 (a) through (j) of these bylaws, the General Counsel shall publicly certify that, in his or her opinion, the meeting or portion of the meeting may be closed to the public, stating each relevant exemptive provision. The Secretary shall retain this certification, together with a statement from the officer presiding at the meeting which sets forth the time and place of the meeting, and the persons present.

(b) The Secretary shall arrange for a complete transcript or electronic recording adequate to record fully the proceedings to be made of each meeting or portion of a meeting of the Board which is closed to the public. The Secretary shall maintain a complete verbatim copy of the transcript or a complete electronic recording of each meeting or portion of a meeting closed to the public for at least 2 years after the meeting, or for 1 year after the conclusion of any Postal Service proceeding with respect to which the meeting was held, whichever occurs later.

(c) Except for those items of discussion or testimony which the Board, by a majority vote of those members who are present, determines to contain information which may be withheld under § 7.3 of these bylaws, the Secretary shall promptly make available to the public, in the Public and Employee Communications Department at Postal Service Headquarters, or in another place easily accessible to the public, the transcript or electronic recording of a cloεed meeting, including the testimony of any witnesses received at the meeting. The Secretary shall furnish a copy of this transcript or a transcription of this electronic recording disclosing the identity of each speaker, to any person at the actual cost of duplication or transcription.

(39 U.S.C. 202, 205, 401 (2), (10), 1003, 3013

[42 FR 12862, Mar. 7, 1977, as amended at 49 FR 7230, Feb. 28, 1984]

§ 7.7 Enforcement.

(a) Under 5 U.S.C. 552b(g), any person may bring a proceeding in the United States Court of Appeals for the District of Columbia to set aside any provisions of these bylaws which are not in accord with the requirements of 5 U.S.C. 552b(a)–(f) and to require the promulgation of provisions that are in accord with those requirements.

(b) Under 5 U.S.C. 552b(h) any person may bring a civil action against the Board in an appropriate U.S. District Court to obtain judicial review of the alleged failure of the Board to comply with 5 U.S.C. 552b (a)-(f). The burden is on the Board to sustain its action. The court may grant appropriate equitable relief, including enjoining future violations, or ordering the Board to make public information improperly withheld from the public.

(c) Under 5 U.S.C. 552b(i) the court may assess against any party reasonable attorney fees and other litigation costs reasonably incurred by any other party who substantially prevails, except that the court may assess costs against the plaintiff only if the court finds that he initiated the suit primarily for frivolous or dilatory purposes.

§ 7.8 Open meetings, Freedom of Information, and Privacy of Information.

The provisions of 5 U.S.C. 552b(c)(1)-(10), enacted by Pub. L. 94-409, the Government in the Sunshine Act, govern in the case of any request under the Freedom of Information Act, 5 U.S.C. 552, to copy or to inspect the transcripts or electronic recordings described in § 7.6 of these bylaws. Nothing in 5 U.S.C. 552b authorizes the Board to withhold from any individual any record, including the transcripts or electronic recordings described in § 7.6 of these bylaws, to which the individual may otherwise have access under 5 U.S.C. 552a, enacted by the Privacy Act of 1974, Pub. L. 93-579.

PART 8—REPORTS AND RECORDS [ARTICLE VIII]

Sec.
8.1 Open meetings report.
8.2 Reports to the executive and legislative branches.
8.3 Annual budget; financial reports.

AUTHORITY: 39 U.S.C. 202, 203, 205, 401(2), (10), 1003, 3013; 5 U.S.C. 552b (g), (j).

§ 8.1 Open meetings report.

The Secretary shall annually prepare for approval by the Board and transmittal to Congress a report on the Board's compliance with 5 U.S.C. 552b, as enacted by the Government in the Sunshine Act. The report must contain a tabulation of the total number of Board meetings open to the public, the total number of meetings closed to the public, the reasons for closing those meetings and a description of any litigation brought against the Board under the Act, including any costs assessed against the Board in that litigation.

[42 FR 12864, Mar. 7, 1977]

§ 8.2 Reports to the executive and legislative branches.

(a) No later than the annual meeting of the Board, the Postmaster General shall give to the Board an annual report concerning the operations of the Postal Service, as required by 39 U.S.C. 2402. Upon approval of this report, or after making any changes it considers appropriate, the Board shall transmit this report to the President and the Congress. The Postmaster General shall make the necessary arrangements for the printing of the report and its sale to the public.

(b) Prior to the submission of the annual budget to the Congress, the Postmaster General shall submit to the Board a comprehensive statement on postal operations containing the information required under 39 U.S.C. 2401(g). Upon approval of this statement, or after making any changes the Board considers appropriate, the statement shall be transmitted to the Congress, as required by 39 U.S.C. 2401(g).

(c) No later than sixty days after each March 31st and each September 30th, the Postmaster General shall submit a report to the Board for the six-month period ending on such date, summarizing the investigative activities of the Postal Service. The report shall include the information specified in 39 U.S.C. 3013. Upon approval of the report by the Board, or after any changes requested by the Board have been made, the Board shall transmit the report to the Congress as required by 39 U.S.C. 3013.

[47 FR 56496, Dec. 17, 1982, as amended at 49 FR 7230, Feb. 28, 1984]

§ 8.3 Annual budget; financial reports.

The Postmaster General shall annually submit to the Board a budget for the following fiscal year under requirements as to form, content, and schedule established by the Board. After review by the Board, the Postmaster General shall submit the annual budget of the Postal Service to the Office of Management and Budget of the Executive Office of the President in the manner provided by 39 U.S.C. 2009, and to the House Committee on Post Office and Civil Service and Senate Committee on Governmental Affairs and the Committees on Appropriations of the Senate and the House of Representatives, as required by 39 U.S.C. 2401(g).

[42 FR 12864, Mar. 7, 1977, as amended at 54 FR 42302, Oct. 16, 1989]

PART 9—POLICY ON COMMUNICATIONS WITH GOVERNORS OF THE POSTAL SERVICE DURING PENDENCY OF RATE AND CLASSIFICATION PROCEEDINGS [APPENDIX]

Sec.
9.1 General policy.
9.2 Communications with the Governors during the restricted period.
9.3 Public availability of communications.

AUTHORITY: 39 U.S.C. 202, 203, 205, 401 (2), (10), 3621, 3625.

SOURCE: 49 FR 2888, Jan. 24, 1984, unless otherwise noted.

§ 9.1 General policy.

(a) To represent the public interest generally and to insure that the Postal Service meets the needs of the mailing public, the Governors must be free to hold uninhibited discussions on broad postal issues with mailers and the general public. Nevertheless, the Governors believe that certain restrictions on communications with the public are appropriate when the Governors act in their capacity as final administrative decisionmakers on recommended decisions of the Postal Rate Commission concerning postal rates and classifications. These restrictions should reflect a balance between, on the one hand, the need to safeguard the integrity of the administrative process for setting rates and classifications and insure meaningful judicial review of decisions of the Governors on these subjects, and on the other hand, the need for open access to the Board to permit the members to meet their statutory responsibilities. To strike an appropriate balance, the Board has adopted the following general guidelines: From the time the Postal Rate Commission issues a recommended decision until the Governors have acted on the recommended decision, any communication from an interested person to the Governors that is relevant to the merits of the proceeding should be on the public record and available for public inspection.

(b) In reviewing recommended decisions of the Commission, the Governors act on the record before them. They are under no obligation to take communications from the public into account in reaching their decision.

§ 9.2 Communications with the Governors during the restricted period.

Once the Commission issues a recommended decision, and until the Governors have acted on that recommended decision by approving, rejecting, allowing under protest or modifying it, the following guidelines apply to communications with the Governors that are relevant to the merits of the proceeding.

(a) *Oral communications.* During the restricted period, it is the policy of the Governors not to receive oral communications relevant to the merits of the proceeding from any interested person. In the event such a conversation does inadvertently take place, the Governor involved shall prepare a memorandum of the conversation and submit it to the Secretary of the Board for inclusion in the public record, where it shall be available for public inspection.

(b) *Written communications.* (1) During the restricted period any communication relevant to the merits of the proceeding that an interested person may wish to submit to the Governors must be in writing and should not exceed fifteen pages in length. Such comments should be based on the record and addressed to the Governors through the Secretary of the Board. If the commenter has been a party to the Commission proceeding, copies should be sent to all other parties to that proceeding. The Secretary shall make all such communications available for public inspection.

(2) Because the Governors are often required to act promptly on a recommended decision from the Commission, interested persons seeking to communicate with the Governors should submit their comments no later than ten (10) days after the Commission has issued its recommended decision. This period may be extended at the discretion of the Governors.

(c) *Scope of the guidelines.* These guidelines apply to communications from interested persons to the Governors, their staff, personal assistants (if any), the Secretary of the Board and any official of the Office of the Board. Since the Act assigns final decision-making authority on Commission recommended decisions to the Governors and not the Board, these guidelines do not apply to the Postmaster General or the Deputy Postmaster General, nor do they apply to other officers or officials of the Postal Service. Moreover, in order to carry out their statutory responsibility to direct "the exercise of the power of the Postal Service," 39 U.S.C. 202(a), the Governors must be free to discuss all matters of postal policy with officers and employees of the Postal Service. Accordingly, no restrictions apply to communications between the Governors and Postal Service employees.

§ 9.3 Public availability of communications.

All communications placed on the public record pursuant to these guidelines shall be available for public inspection at the Office of the Board of Governors, United States Postal Service, Room 10-300, 475 L'Enfant Plaza West, SW., Washington, DC 20260-1000, between 8:30 a.m. and 4:30 p.m., Monday through Friday except Federal holidays.

PART 10—CODE OF ETHICAL CONDUCT FOR POSTAL SERVICE GOVERNORS [APPENDIX]

Subpart A—Basic Purpose and Applicability

Sec.
10.11 Introduction.
10.12 Code of Ethics for Government Service.

Subpart B—Standards of Conduct

10.21 General.
10.22 Conflicts of interest—financial.
10.23 Conflicts of interest—employment.
10.24 Conflicts of interest—gifts, entertainment, and favors.

Subpart C—Ethical Conduct Advisory Services and Post-employment Activities

10.31 Advisory service.
10.32 Post-employment activities.

Subpart D—Reports of Employment and Financial Interests

10.42 Financial disclosure reports.

AUTHORITY: 39 U.S.C. 401, 18 U.S.C. 207(j); E.O. 11222, 30 FR 6469, 3 CFR 1965 Supp., p. 10, as amended by E.O. 11590, 36 FR 7831, 3 CFR Part 405 (1972); 5 CFR 735.104.

SOURCE: 52 FR 29697, Aug. 11, 1987, unless otherwise noted.

Subpart A—Basic Purpose and Applicability

§ 10.11 Introduction.

Executive Order 11222 sets forth standards of ethical conduct for Government officers and employees. It directs agencies to issue regulations which both implement the Order and supplement it with regulations of special applicability to the particular functions and activities of the agency. Accordingly, the Board of Governors has established this Code of Ethical Conduct for Postal Service Governors.

§ 10.12 Code of Ethics for Government Service.

The Code of Ethics for Government Service, adopted by Joint Resolution of the 85th Congress, properly calls for the best from all who are in public service and should be followed by all Postal Service Governors.

CODE OF ETHICS FOR GOVERNMENT SERVICE

Any person in Government service should:

1. Put loyalty to the highest moral principles and to country above loyalty to persons, party, or Government department.

2. Uphold the Constitution, laws, and legal regulations of the United States and of all governments therein and never be a party to their evasion.

3. Give a full day's labor for a full day's pay; giving to the performance of his duties his earnest effort and best thought.

4. Seek to find and employ more efficient and economical ways of getting tasks accomplished.

5. Never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not; and never accept, for himself or his family, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties.

6. Make no private promises of any kind binding upon the duties of office, since a Government employee has no private word which can be binding on public duty.

7. Engage in no business with the Government, either directly or indirectly, which is inconsistent with the conscientious performance of his governmental duties.

8. Never use any information coming to him confidentially in the performance of governmental duties as a means for making private profit.

9. Expose corruption wherever discovered.

10. Uphold these principles, ever conscious that public office is a public trust.

Subpart B—Standards of Conduct

§ 10.21 General.

(a) *General Principles*. A Governor shall avoid any action, whether or not specifically prohibited by this Code, which might result in or create the appearance of:

(1) Giving preferential treatment to any person;

(2) Impeding Postal Service efficiency or economy;

(3) Losing complete independence or impartiality;

(4) Making a Postal Service decision outside official channels; or

(5) Affecting adversely the confidence of the public in the integrity of the Postal Service.

(b) No Governor shall use his or her position with the Postal Service to coerce, or give the appearance of coercing, a person to provide financial benefit to him- or herself or another person.

(c) No Governor shall directly or indirectly use, appear to use, or allow the use of, his or her official position or information obtained as a result of his or her position to further any private interest, whether his or her own or that of another person.

(d) For the purposes of the conflict of interest statutes found at Chapter 11 of Title 18 of the United States Code, the Director, Office of Government Ethics has determined that Governors of the Postal Service are special Government employees within the meaning of 18 U.S.C. 202.

(e) The conduct expected and required of a Governor will often depend on the particular facts of each instance. Although detailed regulations cannot practically be prescribed that will cover every situation, the following rules provide guidance and illustrate the manner in which the general principles should be applied.

§ 10.22 Conflicts of interest—financial.

(a) *General principles*. No Governor may have a financial interest, direct or indirect, that conflicts substantially, or appears to conflict substantially, with his or her duties and responsibilities to the Postal Service. For the purposes of this Code, a Governor's interests include those of his or her spouse, his or her minor child or children, and other individuals related to the Governor by blood who are residents of the Governor's household.

(b) No Governor shall enter into any contract with the Postal Service or otherwise have an interest in any contract with the Postal Service unless there has been a prior determination by an ethics official that the interest is so minor that no realistic possibility of a conflict of interest, or the appearance of a conflict of interest, exists. No such determination is required, however, if:

(1) The interest results solely from the Governor's ownership of publicly traded securities of a corporation or the Governor's service as a fiduciary of a trust or estate that owns such publicly traded securities; and

(2) Neither the contract, nor a transaction of which it is a part, requires action by the Board.

(c) No Governor shall engage, directly or indirectly, in a financial transaction as a result of, or primarily relying on, information obtained as a result of his or her position as Governor.

(d) No Governor shall sell or lease property to the Postal Service.

(e) No Governor shall recommend or suggest the employment of any private person offering services as a consultant, agent, attorney, expeditor or the like for the purpose of assisting a private party in any negotiations, transactions or other business with the Postal Service.

(f) Section 203 of title 18, United States Code, prohibits any Governor, as a special Government employee, from soliciting or accepting any fee or other compensation for services rendered by him- or herself or another person in representing any person other than the United States before any executive department, agency, court martial, officer or commission in relation to any proceeding or other particular matter involving a specific party or parties in which a Governor has participated personally and substantially during his or her term.

(g) Section 208(a) of Title 18, United States Code, prohibits participation by any Governor in any decision or other matter in which, to the Governor's knowledge, he or she, any entity of which he or she is an employee, director, partner, or other fiduciary, or any person or organization with whom he or she is negotiating or has any arrangement concerning prospective employment, has a financial interest. Although this statute applies even though the interest is minimal, section 208(b) permits the application of section 208(a) to be waived, if it is properly determined that the interest is not so substantial as to be deemed likely to affect the integrity of the services which may be expected from a Governor.

§ 10.23 Conflicts of interest—employment.

(a) *General principles.* No Governor shall accept employment, compensation, payment of expense, or any other thing of monetary value under circumstances in which acceptance may result in, or create the appearance of, a conflict of interest.

(b) No Governor shall engage in outside employment or other outside activity not compatible with the full and proper discharge of the duties and responsibilities of his or her position as Governor. To this end, each Governor should avoid the following:

(1) Working for any person with whom the Governor has official dealings on behalf of the Postal Service;

(2) Acting as consultant to any person who has a contract with the Postal Service or who the Governor has reason to believe intends to obtain, or seek to obtain, such a contract.

(3) Being employed by, or engaging in professional practice for, a person whose business interests are:

(i) Substantially dependent upon, or may be significantly affected by, postal rates, fees or classifications; or

(ii) Substantially dependent upon providing goods or services to or for use in connection with the Postal Service.

(c) No Governor shall engage in any activity for compensation, or accept any outside employment, or receive any salary or other thing of monetary value which is, directly or indirectly, a form of compensation from a private source for his or her services to the Postal Service.

(d) No Governor shall engage in, or be associated with an entity that is principally engaged in, the private business of delivering any type of mailable matter in substantial competition with the Postal Service.

(e) Section 205 of Title 18, United States Code, prohibits any Governor, as a special Government employee, from acting as agent or attorney in representing a private party before any department, agency, court, court-martial, officer, or commission in connection with any claim, proceeding or other particular matter involving a specific party or parties in which a Governor has participated personally and substantially during his or her term.

(f) No Governor shall use his or her official title, position, or authority in the endorsement or advertisement of a commercial product or service.

(g) Within the limitations imposed by this section, a Governor may engage in teaching, lecturing, and writing. He or she shall not, however, receive compensation or anything of monetary value for any consultation, lecture, discussion, writing, or appearance whose subject matter is devoted substantially to the responsibilities, programs, or operations of the Postal Service, or which draws substantially on official data or ideas which have not become part of the body of public information.

§ 10.24 Conflicts of interest—gifts, entertainment, and favors.

(a) *General principles.* No Governor shall solicit or accept for him- or herself or another person any gift, favor, entertainment, meal, loan, or other thing of value from any person who:

(1) Has, or is seeking to obtain, contractual or other business or financial relations with the Postal Service;

(2) Conducts operations or activities that are regulated by the Postal Service; or

(3) Has interests that may be substantially affected by the performance or non-performance of the Governor's official duties.

(b) Notwithstanding the provisions of paragraph (a) of this section, a Governor may:

(1) Accept such gift or other thing of value when the circumstances make it clear that it is family or personal relationships (such as those of parent, child, or spouse) rather than the business of the persons concerned which are the motivating factors;

(2) Accept food and refreshments of nominal value on infrequent occasions in the ordinary course of a luncheon or dinner meeting or other meeting or similar event where he or she is properly in attendance and where payment by the Governor is impracticable;

(3) Accept loans from banks or other financial institutions on customary terms in order to finance proper and usual activities, such as home mortgage loans; and

(4) Accept unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars and other items of nominal intrinsic value.

(c) When a Governor travels on official business he or she should use commercial transportation at Postal Service expense.

(d) No Governor shall except a gift, present, decoration, or any other thing from a foreign government unless authorized in accordance with the Foreign Gifts and Decorations Act, 5 U.S.C. 7432.

Subpart C—Ethical Conduct Advisory Services and Post-employment Activities

§ 10.31 Advisory service.

(a) The General Counsel is the Ethical Conduct Officer and Designated Agency Ethics Official of the Postal Service.

(b) A Governor may obtain advice and guidance on questions of conflicts of interest covered by this Code from the General Counsel or from a designated assistant.

(c) If the General Counsel determines that there is a conflict of interest, or the appearance of a conflict of interest, on the part of a Governor, he or she shall bring this to the attention of the Governor or shall notify the Chairman of the Board of Governors or the Vice Chairman, as appropriate.

§ 10.32 Post-employment activities.

Governors of the Postal Service are subject to the restrictions on the post-employment activities of special Government employees imposed by section 207 (a) and (b)(i) of Title 18, United States Code. These post-employment restrictions are set out in the Code of Ethical Conduct for Postal Employees §§ 447.33 and 447.34 of this title.

Subpart D—Reports of Employment and Financial Interests

§ 10.41 Financial disclosure reports.

(a) *Requirement of submission of reports.* The Director of the Office of Government Ethics has ruled that Governors of the Postal Service are not required to file financial disclosure reports that are open to the public. In practice, nonetheless, Governors are asked to complete a non-public financial disclosure report at the time of their nomination and annually thereafter in accordance with this section.

(b) *Person with whom reports should be filed and time for filing.* (1) A Governor shall file a financial disclosure report with the General Counsel on or before May 15 of each year when the Governor has been in office for more than 60 consecutive calendar days during the previous year.

(2) The General Counsel may, for good cause shown, grant to a Governor an extension of up to 45 days. An additional extension of up to 45 days may be granted by the Director of the Office of Government Ethics for good cause shown.

(c) *Information required to be reported.* Each report shall be a full and complete statement, on the form prescribed by the General Counsel and the Office of Government Ethics and in accordance with instructions issued by him or her. The form currently in use is Standard Form 278.

(d) *Reviewing reports.* (1) Financial disclosure reports filed in accordance with the provisions of this section shall, within 60 days after the date of filing, be reviewed by the General Counsel who shall either approve the report, or make an initial determination that a conflict or appearance thereof exists. If the General Counsel determines initially that a conflict or the appearance of a conflict exists, he or she shall inform the Governor of his determination.

(2) If the General Counsel considers that additional information is needed to complete the report or to allow an adequate review to be conducted, he or she shall request the reporting Governor to furnish that information by a specified date.

(3) The General Counsel shall refer to the Chairman of the Board of Governors or the Vice Chairman the name of any Governor he or she has reasonable cause to believe has wrongfully failed to file a report or has falsified or wrongfully failed to report required information.

(e) *Custody of and public access to reports*—*(1) Retention of reports.* Each report filed with the General Counsel shall be retained by him or her for a period of six years. After the six-year period, the report shall be destroyed unless needed in connection with an investigation then pending.

(2) *Confidentiality of reports.* The financial disclosure reports filed by Postal Service Governors shall not be made public.

SUBCHAPTER B—INTERNATIONAL MAIL

PART 20—INTERNATIONAL POSTAL SERVICE

Sec.
20.1 The International Mail Manual; incorporation by reference of international mail regulations.
20.2 Availability of the International Mail Manual.
20.3 Amendments to the International Mail Manual.
20.4 Approval of the Director of the Federal Register.
20.5 Contents of the International Mail Manual.

AUTHORITY: 5 U.S.C. 552(a), 39 U.S.C. 401, 404, 407, 408.

SOURCE: 47 FR 7831, Feb. 23, 1982, unless otherwise noted. Redesignated at 52 FR 29697, Aug. 11, 1987.

§ 20.1 The International Mail Manual; incorporation by reference of international mail regulations.

Section 552(a) of Title 5, United States Code, relating to the public information requirements of the Administrative Procedure Act, provides in pertinent part that "* * * matter reasonably available to the class of persons affected thereby is deemed published in the FEDERAL REGISTER when incorporated by reference therein with the approval of the Director of the Federal Register." In conformity with that provision, and with 39 U.S.C. 410(b)(1), and as provided in this part, the United States Postal Service hereby incorporates by reference in this part, the International Mail Manual, a looseleaf publication published and maintained by the U.S. Postal Service, Washington, DC 20260-5365.

[47 FR 7831, Feb. 23, 1982. Redesignated at 52 FR 29697, Aug. 11, 1987, as amended at 53 FR 52697, Dec. 29, 1988]

§ 20.2 Availability of the International Mail Manual.

(a) Copies of the International Mail Manual are available for reference and inspection upon request at the National Headquarters and regional offices of the U.S. Postal Service and at all United States Post Offices and classified stations and branches during normal business hours. Regional offices are located in Philadelphia, Memphis, Chicago, San Bruno, and Windsor, CT.

(b) A copy of the International Mail Manual, together with each amendment of it, is on file with the Director, Office of the Federal Register, National Archives and Records Administration, at 1100 "L" Street, NW., Room 8401, Washington, DC.

(c) Copies of the International Mail Manual may be purchased from the Superintendent of Documents, Washington, DC 20402-9371 for $14.00. This price covers two complete issues of the International Mail Manual. Information about international mail also appears in condensed form in Publication 51, which the Postal Service publishes and distributes to all post offices and area supply centers. This publication is available to the public free of charge at all post offices and classified stations and branches.

[47 FR 7831, Feb. 23, 1982. Redesignated at 52 FR 29697, Aug. 11, 1987, as amended at 53 FR 52697, Dec. 29, 1988; 54 FR 1050, Jan. 11, 1989]

§ 20.3 Amendments to the International Mail Manual.

(a) Except for interim or final regulations published as provided in paragraph (b) of this section, notices of changes made in the International Mail Manual will periodically be published in the Federal Register. A complete issue of the International Mail Manual, including the text of all changes published to date, will be filed with the Director, Office of the Federal Register. Subscribers to the International Mail Manual will automatically receive the latest issue of the International Mail Manual from the Government Printing Office.

(b) When the Postal Service invites comment from the general public on a proposed change to the International Mail Manual, the proposed change and, if adopted, the interim or final regulation will be published in the FEDERAL REGISTER.

(c) Interim or final regulations published as provided in paragraph (b) of this section, and other changes to the International Mail Manual, adopted subsequent to the notices published under paragraph (a) of this section (except for corrections of minor errors or other nonsubstantive changes), are published in the Postal Bulletin, a weekly postal publication that may be purchased from the Superintendent of Documents, Washington, DC 20402-9371.

(d) Interim regulations will be published in full text or referenced, as appropriate, in the International Mail Manual at the place where they would appear if they become final regulations.

(e) For references to amendments to the International Mail Manual adopted under paragraph (b) of this section subsequent to issuance of the most recent transmittal letter listed below, see § 10.3 in the List of CFR Sections Affected at the end of this volume.

Transmittal letter for issue	Dated	FR publication
1	Nov. 13, 1981	47 FR 7831
2	Mar. 1, 1983	48 FR 28268
3	July 4, 1985	50 FR 49387
4	Sept. 18, 1986	52 FR 3226
5	April 21, 1988	53 FR 24068

[47 FR 7831, Feb. 23, 1982, as amended at 48 FR 28268, June 21, 1983; 50 FR 49387, Dec. 2, 1985; 52 FR 3226, Feb. 3, 1987; 53 FR 24068, June 27, 1988; 53 FR 24830, June 30, 1988; 53 FR 52697, Dec. 29, 1988; 54 FR 1050, Jan. 11, 1989]

§ 20.4 Approval of the Director of the Federal Register.

Incorporation by reference of the publication now titled the International Mail Manual was approved by the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR Part 51 on June 24, 1981.

[49 FR 47389, Dec. 4, 1984]

§ 20.5 Contents of the International Mail Manual.

The International Mail Manual contains the following parts:

(A) CHAPTER 1—INTERNATIONAL MAIL SERVICES

(1) Subchapter 110—General Information

(i) Part 111—Scope
(ii) Part 112—Mailer Responsibility
(iii) Part 113—Individual Country Listings (ICLs)
(iv) Part 114—Availability
(v) Part 115—Official Correspondence

(2) Subchapter 120—Preparation for Mailing

(i) Part 121—Packaging—Sender's Responsibility
(ii) Part 122—Addressing
(iii) Part 123—Customs Forms Required

(3) Subchapter 130—Mailability

(i) Part 131—General
(ii) Part 132—Written, Printed, and Graphic Matter
(iii) Part 133—Improperly Addressed Mail
(iv) Part 134—Valuable Articles
(v) Part 135—Animals and Plants
(vi) Part 136—Special Packaging Requirements
(vii) Part 137—Perishable Biological Substances
(viii) Part 138—Radioactive Materials
(ix) Part 139—Dangerous Materials

(4) Subchapter 140—International Mail Classes

(i) Part 141—Definitions
(ii) Part 142—Size Limits
(iii) Part 143—Envelope and Card Specifications
(iv) Part 144—Official Mail
(v) Part 145—Air Service

(5) Subchapter 150—Postage

(i) Part 151—Postage Rates
(ii) Part 152—Payment Methods
(iii) Part 153—Placement of Postage
(iv) Part 154—Postage for Combination Pieces
(v) Part 155—Remailed Items

(B) CHAPTER 2—CONDITIONS FOR MAILING

(1) Subchapter 210—Express Mail International Service

(i) Part 211—Description
(ii) Part 212—Postage
(iii) Part 213—Weight and Size Limits
(iv) Part 214—Preparation Requirements

(2) Subchapter 220—Letters and Letter Packages

(i) Part 221—Description
(ii) Part 222—Postage
(iii) Part 223—Weight and Size Limits
(iv) Part 224—Preparation Requirements

(3) Subchapter 230—Postcards and Aerogrammes

(i) Part 231—Description
(ii) Part 232—Postage Rates
(iii) Part 233—Weight and Size Limits
(iv) Part 234—Preparation Requirements

(4) Subchapter 240—Printed Matter

(i) Part 241—Description
(ii) Part 242—Postage
(iii) Part 243—Weight and Size Limits
(iv) Part 244—Preparation Requirements
(v) Part 245—Direct Sacks of Printed Matter to One Addressee ("M" Bags)

(5) Subchapter 250—Matter for the Blind

(i) Part 251—Description
(ii) Part 252—Postage Rates
(iii) Part 253—Weight and Size Limits
(iv) Part 254—Preparation Requirements

(6) Subchapter 260—Small Packets

(i) Part 261—Description
(ii) Part 262—Postage Rates
(iii) Part 263—Weight and Size Limits
(iv) Part 264—Preparation Requirements

(7) Subchapter 270—Parcel Post

(i) Part 271—Description
(ii) Part 272—Postage
(iii) Part 273—Weight and Size Limits
(iv) Part 274—Preparation Requirements

(C) CHAPTER 3—SPECIAL SERVICES

(1) Subchapter 310—Certificate of Mailing

(i) Part 311—Description
(ii) Part 312—Availability
(iii) Part 313—Fees
(iv) Part 314—Processing Requests

(2) Subchapter 320—Insurance

(i) Part 321—Description
(ii) Part 322—Availability
(iii) Part 323—Fees and Insured Value
(iv) Part 324—Processing Requests
(v) Part 325—Indemnity Claims and Payments

(3) Subchapter 330—Registered Mail

(i) Part 331—Description
(ii) Part 332—Availability
(iii) Part 333—Fees and Indemnity Limit
(iv) Part 334—Processing Requests
(v) Part 335—Indemnity Claims and Payments

(4) Subchapter 340—Return Receipt

(i) Part 341—Description
(ii) Part 342—Availability
(iii) Part 343—Fee
(iv) Part 344—Processing Requests

(5) Subchapter 350—Restricted Delivery

(i) Part 351—Description
(ii) Part 352—Availability
(iii) Part 353—Fee
(iv) Part 354—Processing Requests

(6) Subchapter 360—Recall/Change of Address

(i) Part 361—Description
(ii) Part 362—Conditions and Limitations
(iii) Part 363—Fees and Charges
(iv) Part 364—Processing Requests

(7) Subchapter 370—Special Delivery

(i) Part 371—Description
(ii) Part 372—Availability
(iii) Part 373—Fees
(iv) Part 374—Processing Requests

(8) Subchapter 380—Special Handling

(i) Part 381—Description
(ii) Part 382—Availability
(iii) Part 383—Fees
(iv) Part 384—Processing Requests

(9) Subchapter 390—Supplementary Servic

(i) Part 391—International Postal Mone Orders
(ii) Part 392—International Reply Coupons

(D) CHAPTER 4—TREATMENT OF OUTBOUND MAIL

(1) Subchapter 410—Postmarking

(2) Subchapter 420—Shortpaid and Unpaid Mail

(i) Part 421—Check for Sufficient Postage
(ii) Part 422—Unpaid Mail
(iii) Part 423—Shortpaid Mail

(3) Subchapter 430—Improperly Prepared Mail

(i) Part 431—Insufficient Address
(ii) Part 432—Oversized or Undersized Items
(iii) Part 433—Oversized Cards
(iv) Part 434—Reply-Paid Cards

(4) Subchapter 440—Special Services Mail

(i) Part 441—Registered Mail
(ii) Part 442—Special Delivery
(iii) Part 443—Special Handling

(5) Subchapter 450—Forwarding

(E) CHAPTER 5—NONPOSTAL EXPORT REGULATIONS

(1) Subchapter 510 [Reserved]

(2) Subchapter 520—Shipper's Export Declaration

(i) Part 521—Description
(ii) Part 522—When Required

(iii) Part 523—How to obtain Commercial Forms
(iv) Part 524—How to Prepare Shipper's Export Declaration (Commerce Form 7525-V)
(v) Part 525—Handling and Disposal of Shipper's Export Declaration

(3) Subchapter 530—Commodities and Technical Data

(i) Part 531—Scope and Applicability of Licensing Requirements
(ii) Part 532—General Export Licenses
(iii) Part 533—Validated Export Licenses

(4) Subchapter 540—Munitions and Related Technical Data

(i) Part 541—Licensing Requirements
(ii) Part 542—Mailing Under Individual Licenses

(5) Subchapter 550—Dried Whole Eggs

(i) Part 551—Description
(ii) Part 552—Charges
(iii) Part 553—How to Mail

(6) Subchapter 560—Tobacco Seeds and Tobacco Plants

(i) Part 561—Description
(ii) Part 562—Charges
(iii) Part 563—How to Mail

(7) Subchapter 570—Consular and Commercial Invoices

(8) Subchapter 580—Drawback Arrangement

(i) Part 581—Description
(ii) Part 582—Processing Drawback Claims

(F) CHAPTER 6—[RESERVED]

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[50 FR 49387, Dec. 2, 1985]

SUBCHAPTER C—POST OFFICE SERVICES [DOMESTIC MAIL]

General Information on Postal Service

PART 111—GENERAL INFORMATION ON POSTAL SERVICE

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111.2 Availability of the Domestic Mail Manual.
111.3 Amendments to the Domestic Mail Manual.
111.4 Approval of the Director of the Federal Register.
111.5 Contents of the Domestic Mail Manual.

AUTHORITY: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001-3011, 3201-3219, 3403-3406, 3621, 5001.

SOURCE: 44 FR 39852, July 6, 1979, unless otherwise noted.

§ 111.1 Domestic Mail Manual; incorporation by reference of regulations governing domestic mail services.

Section 552(a) of Title 5, U.S.C., relating to the public information requirements of the Administrative Procedure Act, provides in pertinent part that "* * * matter reasonably available to the class of persons affected thereby is deemed published in the FEDERAL REGISTER when incorporated by reference therein with the approval of the Director of the Federal Register." In conformity with that provision, and with 39 U.S.C. section 410(b)(1), and as provided in this part, the U.S. Postal Service hereby incorporates by reference in this part, the Domestic Mail Manual, a looseleaf publication published quarterly, March, June, September, and December, and maintained by the U.S. Postal Service, Washington, DC 20260-5365.

[44 FR 39852, July 6, 1979, as amended at 53 FR 52698, Dec. 29, 1988]

§ 111.2 Availability of the Domestic Mail Manual.

(a) Copies of the Domestic Mail Manual are available for reference and inspection upon request at the National Headquarters and regional offices of the U.S. Postal Service and at all U.S. Post Offices and classified stations and branches during normal business hours. Regional offices are located in Philadelphia, Memphis, Chicago, San Bruno, and Windsor, CT.

(b) A copy of the Domestic Mail Manual, together with each amendment of it, is on file with the Director, Office of the Federal Register, National Archives and Records Administration, at 1100 "L" Street, NW., Room 8401, Washington, DC 20408.

(c) The Domestic Mail Manual may be purchased from the Superintendent of Documents, Washington, DC 20402-9371 for $17.00. This price covers four complete issues of the Domestic Mail Manual.

[44 FR 39852, July 6, 1979, as amended at 53 FR 52698, Dec. 29, 1988]

§ 111.3 Amendments to the Domestic Mail Manual.

(a) Except for interim or final regulations published as provided in paragraph (b) of this section, notices of changes made in the Domestic Mail Manual will periodically be published in the Federal Register. A complete issue of the Domestic Mail Manual, including the text of all changes published to date, will be filed with the Director, Office of the Federal Register. Subscribers to the Domestic Mail Manual will automatically receive the latest issue of the Domestic Mail Manual from the Government Printing Office.

(b) When the Postal Service invites comments from the general public on a proposed change to the Domestic Mail Manual, the proposed change and, if adopted, the interim or final regulation will be published in the FEDERAL REGISTER.

(c) Except in emergency or other special circumstances when publication of the full text of interim or final regulations is warranted, summaries of interim or final regulations published as provided in paragraph (b) of this section, and summaries of other changes to the Domestic Mail Manual adopted subsequent to the notices published under paragraph (a) of this section (except for corrections of minor errors or other nonsubstantive changes), are published in the Postal Bulletin, a weekly publication that may be purchased from the Superintendent of Documents, 20402-9371.

(d) Interim regulations will be published in full text or referenced, as appropriate, in the Domestic Mail Manual at the place where they would appear if they become final regulations.

(e) For references to amendments to the Domestic Mail Manual adopted under paragraph (b) of this section subsequent to issuance of the most recent transmittal letter listed below, see § 111.3 in the List of CFR Sections affected at the end of this volume.

Transmittal letter for issue	Dated	Federal Register publication
1	July 30, 1979	44 FR 39742.
2	May 15, 1980	45 FR 42616.
3	July 30, 1980	45 FR 73925.
4	Oct. 1, 1980	46 FR 10154.
5	Mar. 1, 1981	46 FR 25446.
6	July 7, 1981	46 FR 58079.
7	Nov. 1, 1981	47 FR 8179.
8	Jan. 21, 1982	47 FR 8358.
9	May 1, 1982	47 FR 27266.
10	Aug. 1, 1982	47 FR 43952.
11	Jan. 20, 1983	48 FR 10649.
13	Dec. 29, 1983	49 FR 18304.
14	Apr. 12, 1984	49 FR 26228.
15	July 12, 1984	49 FR 33248.
16	Sept. 27, 1984	49 FR 47232.
17	Dec. 20, 1984	50 FR 5580.
18	Feb. 21, 1985	50 FR 12019.
19	June 7, 1985	50 FR 30834.
20	Nov. 14, 1985	51 FR 8495.
21	Sept. 4, 1986	51 FR 43910.
22	Jan.22, 1987	52 FR 10750.
23	May 1, 1987	52 FR 23961.
24	Sept. 20, 1987	52 FR 34778.
25	Dec. 20, 1987	52 FR 48437.
26	April 3, 1988	53 FR 18557.
27	June 19, 1988	53 FR 21821.
28	Sept. 18, 1988	53 FR 35315.
29	Dec.18, 1988	53 FR 49658.
30	Mar. 19, 1989	54 FR 9212.
31	June 18, 1989	54 FR 27880.
32	Sept. 17, 1989	54 FR 37795.
33	Dec. 17, 1989	54 FR 50619.
34	Mar. 18, 1990	55 FR 10061.
35	June 17, 1990	55 FR 24561.

[45 FR 40115, June 13, 1980]

EDITORIAL NOTE For Federal Register citations affecting § 111.3, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 111.4 Approval of the Director of the Federal Register.

Incorporation by reference of the publication now titled the Domestic Mail Manual was approved by the Director of the Federal Register under 5 U.S.C 552(a) and 1 CFR Part 51 on March 29, 1979.

(5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 40 3001-3011, 3201-3218, 3403-3405, 3601, 362 42 U.S.C. 1973cc-13, 1973cc-14)

[49 FR 47389, Dec. 4, 1984]

§ 111.5 Contents of the Domestic Mail Manual.

The Domestic Mail Manual contains the following parts:

(a) CHAPTER 1—DOMESTIC MAIL SERVICES

(1) SUBCHAPTER 110—GENERAL INFORMATION

(i) Part 111—Scope

(ii) Part 112—Who May Carry Letters

(iii) Part 113—Service in Post Offices

(iv) Part 114—Complaints

(v) Part 115—Mail Security

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(vii) Part 119—Trademarks, Service Marks, and Copyrights

(2) SUBCHAPTER 120—PREPARATION FOR MAILING

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(iii) Part 123—Nonmailable Matter—Written, Printed, and Graphic

(iv) Part 124—Nonmailable Matter—Articles and Substances; Special Mailing Rules

(v) Part 125—Mail Addressed From, To, or Between Military Post Offices Overseas

(vi) Part 126—Mail Sent Via Department of State to U.S. Government Personnel Abroad

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(ix) Part 129—Envelopes and Cards

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(ii) Part 132—Rates and Classification Centers

(iii) Part 133—Appeal of a Contested Classification

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(v) Part 135—For the Blind and Other Handicapped Persons
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[44 FR 39852, July 6, 1979, as amended at 53 FR 19299, May 27, 1988]

SUBCHAPTER D—ORGANIZATION AND ADMINISTRATION

PART 211—APPLICATION OF REGULATIONS

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211.1 Disposition of former Title 39, U.S.C.
211.2 Regulations of the Postal Service.
211.3 Executive orders and other executive pronouncements; circulars, bulletins, and other issuances of the Office of Management and Budget.
211.4 Interim personnel regulations.

AUTHORITY: 39 U.S.C. 201, 202, 401(2), 402, 403, 404, 410, 1001, 1005, 1209; Pub. L. 91-375, Secs. 3-5, 84 Stat. 773-75.

SOURCE: 38 FR 20402, July 31, 1973, unless otherwise noted.

§ 211.1 Disposition of former Title 39, U.S.C.

Except as otherwise continued in effect as postal regulations, all provisions of former Title 39, U.S.C., which were continued in effect as regulations of the Postal Service by section 5(f) of the Postal Reorganization Act, are revoked. This revocation does not apply to postal regulations which embody or are derived from provisions of former Title 39.

§ 211.2 Regulations of the Postal Service.

(a) The regulations of the Postal Service consist of:

(1) The resolutions of the Governors and the Board of Governors of the U.S. Postal Service and the bylaws of the Board of Governors;

(2) The Domestic Mail Manual, the Postal Operations Manual, the Administrative Support Manual, the Employee and Labor Relations Manual, the Financial Management Manual, the Postal Contracting Manual, Publication 42 (International Mail), and those portions of Chapter 2 of the former Postal Service Manual and chapter 7 of the former Postal Manual retained in force;

(3) Headquarters Circulars, Management Instructions, Regional Instructions, handbooks, delegations of authority, and other regulatory issuances and directives of the Postal Service or the former Post Office Department. Any of the foregoing may be published in the FEDERAL REGISTER and the Code of Federal Regulations.

(b) Except as otherwise provided by law, the resolutions of the Governors and the Board of Governors of the U.S. Postal Service and the bylaws of the Board of Governors take precedence over all regulations issued by other authority.

(c) The adoption, by reference or otherwise, of any rule of law or regulation in this or any other regulation of the Postal Service shall not be interpreted as any expression on the issue of whether such rule of law or regulation would apply to the Postal Service if it were not adopted as a regulation, nor shall it restrict the authority of the Postal Service to amend or revoke the rule so adopted at a subsequent time.

(d) All regulations of the Post Office Department in effect at the time the U.S. Postal Service commenced operations, continue in effect, except as subsequently modified or repealed by the Postal Service. Except as otherwise continued in effect as postal regulations, all regulations of other agencies of the United States continued in effect as postal regulations by section 5(a) of the Postal Reorganization Act are repealed.

[38 FR 20402, July 31, 1973, as amended at 46 FR 34329, July 1, 1981]

§ 211.3 Executive orders and other executive pronouncements; circulars, bulletins, and other issuances of the Office of Management and Budget.

(a) By virtue of the Postal Reorganization Act, certain executive orders, and other executive pronouncements and certain circulars, bulletins, and other issuances of the Office of Management and Budget or particular provisions thereof, or requirements therein, apply to the Postal Service and certain others do not apply.

(b) It is the policy of the Postal Service to continue to comply with issuances of the kind mentioned in paragraph (a) of this section with which it has previously complied, unless a management decision by an appropriate department head is made to terminate compliance, in whole or in part, following advice from the General Counsel that the issuance is not binding, in whole or in part, on the Postal Service. This policy is not enforceable by any party outside the Postal Service. No party outside the Postal Service is authorized to use the mere non-compliance with this policy against the Postal Service in any way.

§ 211.4 Interim personnel regulations.

(a) *Continuation of Personnel Regulations of the Post Office Department.* All regulations of the former Post Office Department dealing with officers and employees, in effect at the time the U.S. Postal Service commenced operations, continue in effect according to their terms until modified or repealed by the Postal Service or pursuant to a collective bargaining agreement under the Postal Reorganization Act.

(b) *Continuation of Personnel Provisions of Former Title 39, U.S.C.*. Except as they may be inconsistent with other regulations adopted by the Postal Service or with a collective bargaining agreement under the Postal Reorganization Act, all provisions of former Title 39, U.S.C., dealing with and applicable to postal officers and employees immediately prior to the commencement of operations of the Postal Service continue in effect as regulations of the Postal Service.

(c) *Continuation of Other Laws and Regulations as Postal Regulations.* Except as they may be inconsistent with the provisions of the Postal Reorganization Act, with other regulations adopted by the Postal Service, or with a collective bargaining agreement under the Postal Reorganization Act, all regulations of Federal agencies other than the Postal Service or Post Office Department and all laws other than provisions of revised Title 39, U.S.C., or provisions of other laws made applicable to the Postal Service by revised Title 39, U.S.C., dealing with officers and employees applicable to postal officers and employees immediately prior to the commencement of operations of the Postal Service, continue in effect as regulations of the Postal Service. Any regulation or law the applicability of which is continued by paragraphs (a) through (c) of this section which requires any action by any agency other than the Postal Service or Post Office Department shall be deemed to require such action by the Postal Service, unless by agreement with the Postal Service the other agency involved consents to the continuation of its action.

(d) *Effect of Collective Bargaining on Certain Regulations.* All rules and regulations continued or established by paragraphs (a) through (c) of this section which establish fringe benefits as defined in Title 39, U.S.C. 1005(f) of employees for whom there is a collective bargaining representative continue to apply until modified by a collective bargaining agreement concluded pursuant to the Postal Reorganization Act. Those rules and regulations affecting other terms and conditions of employment encompassed by section 8(d) of the National Labor Relations Act, as amended, shall continue to apply to such employees until such collective bargaining agreement has been concluded, and, unless specifically continued by such agreement, shall apply thereafter until modified or repealed by the Postal Service pursuant to its authority under Title 39, U.S.C. 1001(e) and other pertinent provisions of the Postal Reorganization Act. In the event a condition occurs which shall excuse the Postal Service from continuing negotiations prior to the parties thereto concluding an agreement in accordance with the Postal Reorganization Act, the Postal Service reserves the right in accordance with the reorganization measures mandated by the Congress and consistent with the provisions of the Act, and any collective bargaining agreements in existence at that time, insofar as they do not unduly impede such reorganization measures, to continue, discontinue, or revise all compensation, benefits, and terms and conditions of employment of such employees of the Postal Service.

PART 221—GENERAL PRINCIPLES OF ORGANIZATION

Sec.

221.1 The U.S. Postal Service.
221.2 Board of Governors of the Postal Service.
221.3 Postmaster General.
221.4 Deputy Postmaster General.
221.5 Associate Postmaster General.
221.6 Groups and departments.
221.7 Postal Regions.
221.8 Officers.

AUTHORITY: 39 U.S.C. 201, 202, 203, 204, 401(2), 402, 403, 404.

§ 221.1 The U.S. Postal Service.

(a) The U.S. Postal Service has been established as an independent establishment within the executive branch of the Government of the United States under the provisions of the Postal Reorganization Act of August 12, 1970, Pub. L. 91-375, 84 Stat. 719.

(b) As a complement to the information in the regulations in this part, a concise statement of the organization of the Postal Service can be found in the United State Government Organization Manual.

[38 FR 20403, July 31, 1973]

§ 221.2 Board of Governors of the Postal Service.

(a) The Board of Governors directs the exercise of the powers of the Postal Service; reviews the practices and policies of the Postal Service; and directs and controls its expenditures.

(b) For composition of the Board of Governors, see § 3.1 of this chapter.

[38 FR 20403, July 31, 1973, as amended at 51 FR 40796, Nov. 10, 1986]

§ 221.3 Postmaster General.

(a) The Postmaster General (PMG) is the chief executive officer of the Postal Service and is responsible for its overall operation. The PMG is named and can be removed by a majority of the nine Governors.

(b) The Postmaster General determines appeals from the actions of staff and department heads, except that in cases where the PMG has delegated authority to make a decision to a subordinate, such subordinate may also determine appeals within the authority delegated.

(c) The Board of Governors has directed that the Postmaster General exercise the powers of the Postal Service to the extent that such exercise does not conflict with power reserved to the Board by law. The Postmaster General is authorized to direct any officer, employee, or agent of the Postal Service to exercise such of the PMG's powers as the PMG deems appropriate. For the direction of the Board of Governors that the Postmaster General exercise the powers of the Postal Service, see §§ 3.5 and 4.3 of this chapter.

[38 FR 20403, July 31, 1973, as amended at 43 FR 29117, July 6, 1978; 45 FR 43718, June 30, 1980; 51 FR 40796, Nov. 10, 1986]

§ 221.4 Deputy Postmaster General.

(a) The Deputy Postmaster General is the alternate chief executive officer of the Postal Service. The Deputy is appointed and can be removed by the Postmaster General and the Governors. The Deputy is a voting member of the Board of Governors.

(b) The Deputy Postmaster General is required to perform all tasks as assigned by the Postmaster General. The Deputy acts as Postmaster General in the Postmaster General's absence or whenever a vacancy exists in the Office of Postmaster General.

(c) For delineation of authority of the Deputy Postmaster General by the Board of Governors see § 4.4 of this chapter.

[38 FR 20403, July 31, 1973, as amended at 41 FR 16941, Apr. 23, 1976; 43 FR 29117, July 6, 1978; 45 FR 43718, June 30, 1980]

§ 221.5 Associate Postmasters General.

(a) The Associate Postmasters General are appointed and can be removed by the Postmaster General.

(b) The Associate Postmasters General are required to perform all tasks as assigned by the Postmaster General.

[54 FR 29706, July 14, 1989]

§ 221.6 Groups and departments.

(a) Postal Service Headquarters is divided into five major groups: Operations Support, Finance, Human Resources, Marketing and Communications, and Administrative Services.

Each group is headed by a Senior Assistant Postmaster General (SAPMG). The SAPMG for Finance reports directly to the Postmaster General. The SAPMG for Operations Support reports directly to the Deputy Postmaster General. The SAPMGs for Human Resources, Marketing and Communications, and Administrative Services report directly to the Associate Postmaster General (Systems). The SAPMGs are responsible for the following activities within their assigned areas:

(1) Program planning, direction, and review;

(2) Establishment of policies, procedures, and standards; and

(3) Operational determinations not within the full jurisdiction of field officers.

(b) Groups are divided into departments or offices headed by either Assistant Postmasters General (APMGs) or Directors. The heads of these departments and offices report to and are responsible for assisting the SAPMGs in carrying out their assigned activities.

(c) Certain other Headquarters units report directly to the Postmaster General. These include the Inspection Service Department, headed by the Chief Postal Inspector; the Law Department, headed by the General Counsel, and the Planning Department, headed by an Assistant Postmaster General. The Executive Assistant to the Postmaster General also reports to the Postmaster General.

(d)(1) The Senior Management Committee establishes Postal Service direction and policy, initiates and monitors key programs, prioritizes resource utilization, and serves as the review and approval body for all major plans, programs, and projects. It fosters cross-functional cooperation and develops the strategic plans for the Postal Service.

(2) The Senior Management Committee is made up of the following: The Postmaster General, the Deputy Postmaster General, Associate Postmasters General, the Senior Assistant Postmasters General, General Counsel, Chief Postal Inspector, Assistant Postmaster General, Planning (Secretariat), Assistant Postmaster General, Communications (Observer), Assistant Postmaster General, Government Relations (Observer), Executive Assistant to the Postmaster General (Observer), Secretary to the Board of Governors (Observer), Field Executive (Rotational Basis).

(e) Statements of the functions of the various groups, departments, and offices can be found in Part 224 of this chapter.

[51 FR 40796, Nov. 10, 1986, as amended at 54 FR 29706, July 14, 1989]

§ 221.7 Postal Regions.

(a) There are five Postal Regions. Each region is headed by a Regional Postmaster General (RPMG) who reports to the Deputy Postmaster General, and has overall responsibility for operational activities (except those reserved to Headquarters) of the Postal Service within the region.

(b) Each RPMG's office includes five functions—Operations Support, Marketing and Communications, Finance, Planning, and Human Resources. Each regional function is headed by a Regional Director who reports to the RPMG.

(c)(1) Postal regions are composed of field divisions headed by field division general managers/postmasters whose organizational units are in turn composed of management sectional centers (MSCs) headed by MSC managers or MSC managers/postmasters, and bulk mail centers (BMCs) headed by BMC managers.

(2) Each field division general manager/postmaster reports to the RPMG, and has line responsibility for postal activities (except those reserved to Headquarters associate offices) in the division area, the MSCs, associate offices, and BMCs within the division area.

(3) Each MSC manager/postmaster reports to a field division general manager/postmaster, and has line responsibility for postal activities (except those reserved to Headquarters and field divisions) within the MSC area.

(4) Each BMC manager reports to a field division general manager/postmaster, and has line responsibility for postal activities (except those reserved to Headquarters and field divisions) within the BMC.

[51 FR 40797, Nov. 10, 1986, as amended at 54 FR 29707, July 14, 1989]

§ 221.8 Officers.

(a) Officers serve at the pleasure of the Postmaster General. The following officers are appointed by the Postmaster General:

(1) Associate Postmaster General;

(2) Senior Assistant Postmasters General;

(3) Assistant Postmasters General;

(4) The General Counsel and Deputy General Counsel;

(5) The Consumer Advocate;

(6) The Chief Postal Inspector;

(7) The Judicial Officer;

(8) The Executive Assistant to the Postmaster General;

(9) The Treasurer; and

(10) The Regional Postmasters General.

(b) The number of SAPMGs and APMGs is set by resolution of the Board of Governors.

[51 FR 40797, Nov. 10, 1986]

PART 222—DELEGATIONS OF AUTHORITY

Sec.

222.1 Authority for delegation.
222.2 Media of delegation.
222.3 Contents of delegations.
222.4 Redelegation.
222.5 Authority to approve personnel actions and administer oaths of office for employment.
222.6 Authority to administer oaths other than for employment.
222.7 Authority to designate certifying officers—headquarters.
222.8 Authority to designate certifying officers—field.
222.9 Delegation of authority to the Senior Assistant Postmaster General, Finance.
222.10 Delegation of authority to the APMG, International Postal Affairs Department.

AUTHORITY: 39 U.S.C. 203, 204, 401(2), 402, 403, 404, 409.

SOURCE: 38 FR 20404, July 31, 1973, unless otherwise noted.

§ 222.1 Authority for delegation.

(a) The Postmaster General is empowered to authorize any employee or agent of the Service to exercise any function vested in the Postal Service, in the PMG, or in any other Postal Service employee.

(b) The Deputy Postmaster General is the full alternate to the Postmaster General.

(c) When, by reason of absence, disability, or vacancy in office, neither the Postmaster General nor the Deputy Postmaster General can act as Postmaster General, the first available official on the following list will do so:

(1) Associate Postmaster General;

(2) Senior Assistant Postmaster General, Operations Support.

(d) The Postmaster General has been authorized by the Board of Governors to exercise the powers of the Postal Service to the full extent that such exercise is lawful. See §§ 3.5 and 4.3 of this chapter.

(e) The Associate Postmasters General; the SAPMGs; the Chief Postal Inspector; the General Counsel; the Assistant Postmaster General, Planning; and the Executive Assistant to the Postmaster General, act for the Postmaster General on assigned matters. These officers are authorized to exercise the powers and functions of the Postal Service under the Postal Reorganization Act, in respect to matters within their area of responsibility, except as limited by law or by the specific terms of their assignment.

(f) Heads of departments or offices who report to a Senior Assistant Postmaster General are authorized to exercise the powers and functions of that SAPMG within the area of responsibility of their department or office, except as such authority may be reserved or rescinded by the SAPMG or is limited by law or the terms of their specific assignment.

[38 FR 20404, July 31, 1973, as amended at 46 FR 34330, July 1, 1981; 48 FR 1965, Dec. 17, 1983; 48 FR 30111, June 30, 1983; 51 FR 40797, Nov. 10, 1986; 54 FR 29707, July 14, 1989]

§ 222.2 Media of delegation.

(a) All delegations of authority must be issued through official directives.

(b) Headquarters or regional officials shall not orally authorize postmasters to deviate from published instructions, except in emergencies. An oral authorization must be confirmed by a memorandum or order dated subsequent to the issuance date of the most recently published instructions on the subject. Postal inspectors shall charge as irregularities any improperly authorized deviations observed in the course of office inspections.

[38 FR 20404, July 31, 1973, as amended at 51 FR 40797, Nov. 10, 1986]

§ 222.3 Contents of delegations.

(a) Delegations of authority shall ordinarily be made by position title rather than by name of the individual involved. An officer or executive acting in the absence of a principal has the principal's full authority.

(b) When authority is delegated to an officer, the officers above that officer shall have the same authority. Delegated authority shall not extend to aides except when an aide serves on an acting basis (see paragraph (a) of this section) or unless the aide is specifically authorized by the superior to exercise such authority.

(c) A delegation must agree with the law and regulations under which it is made and contain such specific limiting conditions as may be appropriate.

[51 FR 40797, Nov. 10, 1986]

§ 222.4 Redelegation.

(a) Except as otherwise prohibited by law, or by a regulation that expressly prohibits redelegation, or by the terms of the delegation:

(1) Heads of groups, functions, or offices at Headquarters are authorized to redelegate any authority vested in them.

(2) Regional Postmasters General or heads of regional departments are authorized to redelegate any authority vested in them subject to the condition that redelegation to members of a regional staff must be consistent with the then current regional organizational structure.

(3) Field division general managers/postmasters are authorized to redelegate, subject to or within guidelines issued by the RPMG, any authority vested in them, provided that the redelegation is consistent with the current organizational structure.

(4) Postal data center (PDC) directors are authorized to redelegate any authority vested in them.

(5) Heads of MSCs and other field installations are authorized to redelegate to members of their respective staffs any authority vested in them.

[51 FR 40797, Nov. 10, 1986, as amended at 54 FR 29707, July 14, 1989]

§ 222.5 Authority to approve personnel actions and administer oaths of office for employment.

(a) *Delegation.* The following are authorized to effect appointments, administer oaths of office for employment, and take other personnel actions:

(1) Senior Assistant Postmaster General, Human Resources, Assistant Postmasters General, Employee Relations Department and Labor Relations Department;

(2) Chief Postal Inspector;

(3) Regional Chief Postal Inspectors;

(4) Postal Inspectors-in-Charge;

(5) Regional Postmasters General;

(6) Heads of postal field installations including those reporting directly to specified departments in Headquarters or to Regional Postmasters General;

(7) Officials occupying personnel services positions EAS-16 and above, when their positions include responsibility for functions such as recruitment, appointments, replacements, position changes and separations, and related personnel processing.

(b) *Personnel actions for employees of "other installations."* As specifically authorized by either the Senior Assistant Postmaster General, Human Resources or a Regional Postmaster General, officers and employees listed in paragraph (a) of this section may approve personnel actions for employees in offices or installations other than their own as a cross-service, as a central personnel office, or on a special need basis.

(c) *Transfers of accountability.* In addition to other personnel authorized under this section, associate office coordinators at field divisions and management sectional centers may administer oaths of office for employment at any post office in conjunction with transfers of accountability of postmasters.

[38 FR 20404, July 31, 1973, as amended at 40 FR 13498, Mar. 27, 1975; 43 FR 29117, July 6, 1978; 51 FR 40798, Nov. 10, 1986; 54 FR 29707, July 14, 1989]

§ 222.6 Authority to administer oaths other than for employment.

The following are authorized to administer oaths concerning matters other than employment:

(a) Postal inspectors with regard to any matter coming before them in the performance of their official duties;

(b) Any member of a board who is assigned to conduct hearings or investigations in which sworn testimony, affidavits, or depositions are required and each officer or employee assigned to conduct such hearings or investigations;

(c) *Postmasters' authority.* Postmasters are required, empowered, and authorized, when requested, to administer oaths with a like force and effect as officials having a seal, as follows:

(1) *Expense accounts.* Accounts for travel or other expenses against the United States.

(2) *Customs documents.* At post offices where customs officers are not stationed, any oath required to be made to statements in customs documents by importers of merchandise by mail, not exceeding $100 in value.

(3) *Recruitments for Job Training Programs.* Oaths of office to prospective Job Training Programs enrollees.

(4) *Fees.* Do not collect fees for these services. The United States will not reimburse postal employees for fees paid for administering oaths.

(d) *Postmasters in Alaska as notaries public.* (1) Administer oaths and affirmations; take acknowledgments and make and execute certificates thereof; and perform all other functions of a notary public within Alaska whenever a certification is necessary to comply with any Act of Congress or of the Legislature of Alaska.

(2) When executing certificates of oath, affirmation, or acknowledgment, and the title "Postmaster" after your signature and give the name of the post office and date document is executed. Place legible postmark impression of the post office on the document.

(3) Keep a record of all deeds and other instruments of writing acknowledged, relating to the title to or transfer of property. This record shall be available to your successors, and shall be subject to public inspection.

(e) *Fees for notarial service.* An officer or employee who is a notary public shall not charge or receive compensation for notarial services for another officer or employee regarding Government business; nor for notarial services for any person during the hours of the notary's services to the Government, including the lunch period.

(39 U.S.C. 401)

[36 FR 4767, Mar. 12, 1971. Redesignated at 38 FR 20327, July 31, 1973. 38 FR 20404, July 31, 1973, as amended at 40 FR 26511, June 24, 1975; 51 FR 40798, Nov. 10, 1986; 54 FR 29707, July 14, 1989]

§ 222.7 Authority to designate certifying officers—headquarters.

(a) *Delegation.* The following are authorized to designate certifying officers at Headquarters for the items specified:

(1) *The Chief Postal Inspector, for:* (i) Payment from his special deposit account; (ii) disbursements for rewards based on Postmaster General Notices of Reward; (iii) payments from confidential funds; (iv) salary payments for Special Investigations Division; (v) advances of funds for confidential purposes; (vi) inspection service, travel advances, transportation of things; and (vii) payments for special analyses and services.

(2) The General Counsel certifies payments relating to tort claims and claims under 39 U.S.C. 2603.

(3) The Senior Assistant Postmaster General, Finance, certifies all payments not covered by paragraphs (a) (1) and (2) of this section.

(b) *Redelegation.* The officials named in paragraph (a) of this section are authorized to redelegate their authority to designate certifying officers. The redelegation shall be made by letter to the appropriate Postal Data Center disbursing officer and must bear the specimen signature of the person to whom the authority is redelegated.

(c) *Designating certifying officers*—(1) *Inspection Service and Law Department.* Officials authorized to designate certifying officers (see paragraph (a) of this section) will complete SF 210, Signature/Designation Card for Certifying Officer, in duplicate for each Postal Data Center officer affected to show:

(i) Name of department for which vouchers will be certified.

(ii) Signature of certifying officer written exactly as vouchers will be signed.

(iii) Class of vouchers to be certified.

(iv) The official's signature and effective date.

(2) *Other departments and offices.* Other departments and offices requiring certifying officers will complete SF 210 in duplicate as prescribed in paragraph (c)(1) of this section, except for signature and date. Both copies will be sent to the Senior Assistant Postmaster General, Finance.

(3) *Submitting SF 210 to Postal Data Center disbursing officers.* The Chief Postal Inspector, the General Counsel, and the Senior Assistant Postmaster General, Finance, or their designees shall send signed originals of SF 210 to each of the disbursing officers affected and retain duplicates. These documents will be the official designations of the employees named on the SF 210 as certifying officers.

(d) *Maintaining designations.* Each group, department and office must keep current its designation of authorized certifying officers. When new or additional designations are made, the procedures for designating certifying officers contained in this section shall be followed.

[38 FR 20404, July 31, 1973, as amended at 43 FR 29117, July 6, 1978; 51 FR 40798, Nov. 10, 1986; 54 FR 29707, July 14, 1989]

§ 222.8 Authority to designate certifying officers—field.

(a) *Delegation.* The following are authorized to designate certifying officers in Postal Data Centers and Inspection Service regions and divisions:

(1) The Chief Postal Inspector, for obligations of the Inspection Service.

(2) Postal Data Center Directors for obligations of all other regional functions.

(3) The New York Postal Data Center Director for obligations for Headquarters functions except those under § 222.7(a) (1) and (2) and those certified by the Senior Assistant Postmaster General, Finance, or designee.

(b) *Redelegation.* The officials named in paragraph (a) of this section are authorized to redelegate their authority to designate certifying officers. Redelegations shall be by letter to each disbursing officer affected, with the specimen signature of the person to whom authority is redelegated.

(c) *Designating certifying officers.*—(1) *Regional Chief Postal Inspectors and Postal Inspectors-in-Charge.* Regional Chief Postal Inspectors and Postal Inspectors-in-Charge are designated certifying officers, as limited by the Chief Postal Inspector. They are authorized to designate certifying officers for obligations incurred by the Postal Inspection Service. They will complete SF 210 in duplicate to show:

(i) Postal Inspection Service region or division for which vouchers will be certified.

(ii) Signature of certifying officer written in the same manner that he will sign vouchers.

(iii) Class of vouchers to be certified.

(iv) Signature of the designating official and effective date. Regional Chief Postal Inspectors and Postal Inspectors—in—Charge are not authorized to redelegate their authority to designate authorized certifying officers.

(2) *Postal Data Center Directors.* Officers under direction of Postal Data Center Directors will complete SF 210 in duplicate as in paragraph (c)(1) of this section except for signature and date. Both copies will be sent to the appropriate Postal Data Center Director for completion.

(3) *Submitting SF 210 to disbursing officer.* The Regional Chief Postal Inspector, Postal Inspectors-in-Charge, and Postal Data Center Director (or designees) will send the originals of SF 210 to each disbursing officer affected and keep the duplicates. These will be the official designations of the em-

ployees named on the SF 210 as certifying officers.

(d) *Maintaining designations.* Each office under jurisdiction of the officials named in § 222.8 must keep current its designation of authorized certifying officers. When new additional designations are made, this § 222.8 shall be followed.

[38 FR 20404, July 31, 1973, as amended at 51 FR 40796, Nov. 10, 1986; 54 FR 29707, July 14, 1989]

§ 222.9 Delegation of authority to the Senior Assistant Postmaster General, Finance.

(a) *Delegation.* The Senior Assistant Postmaster General, Finance, may take final action on:

(1) Claims for overpayment of pay.

(2) Relief of accountable officers of liability for loss.

(3) Relief of accountable officers of liability for illegal, improper, or incorrect payments.

(4) Certifying officers' accountability.

(5) Deposit to and withdrawal from Postal Service fund.

(6) Collection of debts due the Postal Service with the exception of those falling under the jurisdiction of the Chief Postal Inspector.

(7) Adjustment of claims of postmasters and Armed Forces postal clerks, including the loss of funds or valuable papers from their official custody resulting from burglary, fire, or unavoidable casualty, with concurrence by the General Counsel is cases involving doubtful questions of law or fact.

(b) *Redelegation.* The Senior Assistant Postmaster General, Finance, is authorized to redelegate all or part of the authority vested by paragraph (a) of this section to such other officers or executives as deemed appropriate.

[38 FR 20404, July 31, 1973, as amended at 43 FR 29117, July 6, 1978; 51 FR 40798, Nov. 10, 1986; 54 FR 29707, July 14, 1989]

§ 222.10 Delegation of authority to the APMG, International Postal Affairs Department.

The APMG, International Postal Affairs Department, is authorized to sign Express Mail agreements with foreign postal administrations, and to sign technical agreements for the exchange of postal personnel and property with foreign postal administrations.

[41 FR 52299, Nov. 29, 1976, as amended at 51 FR 40798, Nov. 10, 1986]

PART 223—RELATIONSHIPS AND CHANNELS OF COMMUNICATION

Sec.
223.1 Relationships.
223.2 Channels of communication.

AUTHORITY: 39 U.S.C. 203, 204, 401(2), 402, 403, 404.

§ 223.1 Relationships.

(a) *Between Headquarters and Regions.* Each Headquarters group, department, and office shall provide guidance and policy interpretation to regional officials in its area of responsibility.

(b) *Between Postal Region Offices and Field Divisions.* The Regional Postmaster General shall provide guidance and direction to the respective field division general managers/postmasters within the region with the assistance of Regional Directors and their staffs in their areas of specialization.

(c) *Between Field Divisions and MSCs.* Field division general managers/postmasters and staffs shall provide guidance and direction to their respective MSC managers/postmasters.

(d) *Between Field Divisions and Bulk Mail Centers.* Field division general managers/postmasters and staffs shall provide guidance and direction to their Bulk Mail Center Managers.

[38 FR 20406, July 31, 1973, as amended at 43 FR 29117, July 6, 1978; 48 FR 1966, Jan. 17, 1983; 51 FR 40798, Nov. 10, 1986; 54 FR 29708, July 14, 1989]

§ 223.2 Channels of communication.

(a) *Headquarters and Postal Region Offices.* (1) The heads of groups, departments, and offices formulate the necessary directives to provide guidance to regional officials. Direction of regional officials is provided on employee and labor relations matters by the Senior Assistant Postmaster General, Human Resources, and on other matters by the Deputy Postmaster General.

(2) Policy directives shall be issued over the signatures of the heads of the groups, departments, and offices covering matters within their responsibility, except when the Postmaster General or Deputy Postmaster General may wish to issue such directives personally. Policy directives shall be coordinated with other appropriate groups, departments and offices before issuance and reviewed and disseminated by the APMG Information Resource Management Department, and, if within the authority of the issuer, shall have the same effect as though sent by the Postmaster General or the Deputy Postmaster General.

(3) Guidelines and program implementation instructions and procedures not involving policy shall ordinarily be issued over the signature of the group, department, or office head having jurisdiction.

(4) Regional staff officials may communicate directly with the corresponding functional group, department, or office in Headquarters on matters within their area of jurisdiction. In addition, where authorized, they may also directly contact supporting Headquarters departments such as Law Department and Inspection Service Department on technical matters not requiring administrative judgment of the Regional Postmaster General.

(b) *Regional Offices and Field Installations.* The regular channels of communication are:

(1) Associate office postmasters, to and from their MSC Manager/Postmaster.

(2) MSC Managers/Postmasters, to and from their Field Division General Manager/Postmaster.

(3) BMC managers, to and from field division general managers/postmasters.

(4) Field division general managers/postmasters, to and from their Regional Postmasters General.

(5) Heads of other postal installations, to and from their designated superiors as appropriate.

(c) *Headquarters, Postal Region Offices, and other Postal Installations with Postal Data Centers.* (1) The Information Resource Management Department provides the necessary directives to the PDCs. The Law Department shall maintain direct contact on matters relating to professional and policy guidance on claims.

(2) Postal Region Offices and Postal Data Centers may communicate directly with each other.

(3) Other postal installations and PDCs may communicate directly on routine accounting matters.

[38 FR 20406, July 31, 1973, as amended at 43 FR 29117, July 6, 1978; 48 FR 1966, Jan. 17, 1983; 48 FR 30111, June 30, 1983; 51 FR 40798, Nov. 10, 1986; 54 FR 29708, July 14, 1989]

PART 224—ORGANIZATIONS REPORTING DIRECTLY TO THE POSTMASTER GENERAL

Sec.

224.1 Finance Group.
224.3 Inspection Service Department.
224.4 General Counsel.
224.5 Planning Department

AUTHORITY: 39 U.S.C. 203, 204, 401(2), 402, 403, 404, and 409.

SOURCE: 52 FR 46998, Dec. 11, 1987, unless otherwise noted.

§ 224.1 Finance Group.

(a) *General.* The Finance Group is headed by a Senior Assistant Postmaster General (SAPMG). The group consists of three departments, each headed by an Assistant Postmaster General, and the Office of the Treasurer and the USPS Records Officer. The SAPMG, Finance, participates in the planning and budget process, and reviews and evaluates the budget requests of each region for the areas under control of the Finance Group.

(b) *Rates and Classification Department.* The Rates and Classification Department is responsible for:

(1) Designing and maintaining the rate and mail classification structure.

(2) Developing and administering standards and procedures related to cost analysis and attribution.

(3) Forecasting mail volume.

(4) Developing and supporting rate recommendations to the Postal Rate Commission.

(5) Developing policies, regulations, systems, and procedures for the management and control of the admissibil-

ity, classification, and application of rates and fees for domestic or international mail of all classes and the collection of revenue from bulk mailers and special service users.

(c) *Controller Department*. The Controller Department is responsible for:

(1) Developing financing policy and forecasting long-term financing, capital requirements, and borrowing needs.

(2) Establishing a comprehensive controllership program for financial management.

(3) Maintaining control of the financial activities.

(4) Developing accounting policy and procedures and operating the financial reporting programs and controls.

(5) Establishing budgeting, economic and cost benefit functions, payroll systems, policies, and procedures.

(6) Directing the formulation and presentation of a national budget to the Senior Management Committee, Board of Governors, Office of Management and Budget, and Congress.

(d) *Special Projects Department*. The Special Projects Department is responsible for:

(1) Assisting senior management in formulating policy and direction on complex issues.

(2) Directing special studies identified by senior management for use in senior management deliberations.

(3) Monitoring specifically designed issues on behalf of senior management and providing staff analysis of these issues as they change over time.

(4) Providing leadership responsibility on behalf of senior management for special projects and organizational initiatives.

(5) Participating in senior management meetings as appropriate.

(e) *Office of the Treasurer*. The Treasurer is responsible for:

(1) Operating a nationwide network of primary and concentration banks to gather revenue.

(2) Developing cash management initiatives to speed cash flow.

(3) Implementing debt management strategies to meet long-term capital and short-term borrowing needs.

(4) Planning investment strategies to ensure liquidity and to earn a competitive rate of return.

(5) Managing the investment of excess cash.

(f) *Records Officer*. The Records Officer has responsibility for the retention, security, and privacy of Postal Service records; authorizes their preservation and disclosure; and orders their disposal by destruction or transfer.

[52 FR 46998, Dec. 11, 1987; 52 FR 49015, Dec. 29, 1987. Redesignated and amended at 54 FR 29708, July 14, 1989]

§ 224.3 Inspection Service Department.

(a) The Inspection Service Department is headed by the Chief Postal Inspector.

(b) The Inspection Service is responsible for:

(1) Protecting mail matter.

(2) Enforcing postal laws governing facilities and employees.

(3) Carrying out investigations and presenting evidence to the Department of Justice and U.S. Attorneys in investigations of a criminal nature.

(4) Performing internal audits of postal operations.

(5) Providing liaison with law enforcement agencies and all levels of government on all activities related to security and defense coordination.

§ 224.4 General Counsel.

(a) *General*. The General Counsel heads the Law Department; the Government Relations Department reports to the General Counsel.

(b) *Law Department*. The Law Department is responsible for:

(1) Serving as legal advisor to the entire Postal Service and interpreting laws as they relate to the Postal Service.

(2) Making rulings, giving advisory opinions, drafting or approving legal instruments, instituting and maintaining administrative proceedings, representing the Postal Service in administrative proceedings, and in judicial proceedings, as authorized.

(3) Preparing the legislative program of the Postal Service and publishing regulations in the FEDERAL REGISTER.

(4) Administering activities under the Tort Claims Act, and other personal injury and physical loss claims.

(5) Acting as agent for the receipt of legal process on behalf of the Postal Service and the Postmaster General and other officials resulting from the performance of their official functions.

(6) Administering the Ethical Conduct Program.

(c) *Government Relations Department.*/The Government Relations Department is responsible for:

(1) Maintaining cooperative relationships among Congress, Federal agencies within the Executive Branch, the White House, and state and local government officials.

(2) Advising postal officials on legislative or other policy matters in public areas involving congressional committees or individual members of Congress.

(3) Maintaining liaison with members of Congress and their staffs to exchange information on specific legislation and Postal Service policies and operations.

§ 224.5 Planning Department

The Planning Department is responsible for:

(a) Forecasting trends and developments, both external and internal, which may have an impact on the Postal Service environment.

(b) Assisting departments in developing plans in accordance with goals and objectives set by the Postmaster General and the Board of Governors.

(c) Establishing and maintaining the planning calendar.

(d) Coordinating the strategic planning process.

(e) Assisting in the development of comprehensive and effective plans.

(f) Identifying and evaluating economic, political, social, technical, and market trends and events.

(g) Developing a projection of long-range business targets as a basis for setting goals and objectives.

(h) Formulating alternative business strategies.

(i) Conducting special economic studies.

[54 FR 29708, July 14, 1989]

PART 225—ORGANIZATIONS REPORTING DIRECTLY TO THE DEPUTY POSTMASTER GENERAL

AUTHORITY: 39 U.S.C. 203, 204, 401(2) 402, 403, 404, and 409.

§ 225.1 Operations Support Group.

The Operations Support Group is headed by an SAPMG. The group consists of three departments, each reporting to the SAPMG.

(a) *Delivery, Distribution, and Transportation Department.* The Delivery, Distribution, and Transportation Department is responsible for:

(1) Developing and implementing national policies, procedures, and short- and long-range operational plans for the collection, distribution, transportation, and delivery of all classes of domestic, international, and military mail.

(2) Developing and implementing national policies, procedures, and short- and long-range operational plans for field retail operations.

(3) Establishing and controlling national (inter-regional) distribution and transportation networks.

(4) Establishing requirements and managing the acquisition and deployment of mail transport equipment.

(5) Developing procurement policies for the transportation of mail.

(6) Managing the development of policies and procedures to ensure the optimum use and benefits of automated equipment.

(b) *Operations Systems and Performance Department.* The Operations Systems and Performance Department is responsible for:

(1) Defining, operating, and maintaining the major operating performance management systems.

(2) Setting goals, analyzing trends, and assessing performance in key operations areas.

(3) Identifying and resolving operating problems.

(4) Developing operating management systems, computer models, and new methods for distribution and delivery.

(5) Directing the acquisition, deploy-

ment, maintenance, and disposal of postal vehicles.

(6) Directing the maintenance and improvement of address information and related systems.

(c) *Engineering and Technical Support Department.* The Engineering and Technical Support Department is responsible for:

(1) Planning and approving all operating requirements and standards for mechanized and automated facilities.

(2) Establishing national policy and programs for the maintenance of facilities and mail processing, customer services, and delivery services related mechanization.

(3) Maintaining a technical and field support capacity for new and modified equipment and providing for the overhaul of major mail processing equipment.

(d) The Regional Postmasters General report to the Deputy Postmaster General.

[54 FR 29708, July 14, 1989]

PART 226—GROUPS AND DEPARTMENTS REPORTING TO THE ASSOCIATE POSTMASTERS GENERAL

Sec.
226.1 The Associate Postmaster General (Systems).
226.2 Facilities and Supply Group.
226.3 Human Resources Group.
226.4 Marketing and Communications Group.
226.5 Associate Postmaster General (International).

AUTHORITY: 39 U.S.C. 203, 204, 401(2), 402, 403, 404, and 409.

SOURCE: 52 FR 46999, Dec. 11, 1987, unless otherwise noted.

§ 226.1 The Associate Postmaster General (Systems).

The Associate Postmaster General (Systems) is responsible for managing groups, headed by an SAPMG, and departments which make up the support functions of the Postal Service.

[54 FR 29709, July 14, 1989]

§ 226.2 Facilities and Supply Group.

(a) *General.* The Administrative Services Group consists of three departments headed by an Assistant Postmaster General and one department headed by the Judicial Officer.

(b) *Facilities Department.* The Facilities Department is responsible for:

(1) Designing, constructing, modifying, and repairing facilities.

(2) Leasing, purchasing, managing, and disposing of real estate.

(3) Developing policies, procedures, and new technology in support of facilities programs.

(4) Maximizing the use of real estate assets.

(c) *Procurement and Supply Department.* The Procurement and Supply Department is responsible for:

(1) Developing, implementing, and reviewing procurement and contracting policies and procedures.

(2) Developing, implementing, and reviewing warehousing and inventory of equipment and supplies.

(3) Directing the day-to-day maintenance and repair of the headquarters building.

(d) *Information Resource Management Department.* The Information Resource Management Department is responsible for:

(1) Providing data processing support services including systems analysis and programming.

(2) Establishing policy and procedures on the use of computers and telecommunications.

(3) Guiding the development of information systems.

(4) Managing a national data and voice communications systems.

(5) Providing payroll processing and distribution services and general accounting services.

(6) Providing technical solutions to information requirements.

(e) *Judicial Officer.*

(1) The Judicial Officer is responsible for:

(i) The performance of quasi-judicial duties and the issuance of final decisions and orders.

(ii) Serving as the agency for the purposes of the requirements of the Administrative Procedure Act.

(iii) Presiding at the reception of evidence as provided in rules of practice.

(iv) Revising or amending the rules governing eligibility to practice before the Postal Service, revising or amending Postal Service rules of practice governing proceedings conducted under the Administrative Procedure Act, and issuing and revising rules of practice for other proceedings.

(v) Serving as Chairman of the Board of Contract Appeals and performing the functions of the agency head under the Contract Disputes Act of 1978, as amended.

(vi) Administratively supervising Administrative Law Judges and hearing appeals from their decisions.

(2) Board of Contract Appeals is responsible for processing, hearing and issuing final agency decisions in connection with contract disputes.

(3) Office of Administrative Law Judges. Administrative Law Judges are responsible for presiding at administrative hearings as delegated by the Judicial Officer.

[52 FR 46999, Dec. 11, 1987; 54 FR 29709, July 14, 1989]

§ 226.3 Human Resources Group.

(a) *General.* The Human Resources Group consists of three departments, each reporting to the SAPMG.

(b) *Employee Relations Department.* The Employee Relations Department is responsible for:

(1) Managing programs and policies for new and revised organization structures, staffing patterns, and job descriptions.

(2) Establishing outside recruitment and selection and internal promotion procedures.

(3) Managing all employee compensation and benefits programs and policies.

(4) Administering all equal employment opportunity and affirmative action programs.

(5) Managing medical, safety, and injury compensation programs and policies.

(c) *Labor Relations Department.* The Labor Relations Department is responsible for:

(1) Negotiating and interpreting collective bargaining agreements.

(2) Coordinating programs that affect bargaining unit employees.

(3) Developing policies and procedures for administering the national grievance and arbitration programs.

(4) Administering programs to improve the quality of working life in the Postal Service.

(d) *Training and Development Department.* The Training and Development Department is responsible for:

(1) Developing all course materials for craft, supervisory, and management employees training.

(2) Providing training for employees at the Technical Training Center and the William F. Bolger Management Academy, and at other training centers.

(3) Designing in-service employee development programs.

[52 FR 46999, Dec. 11, 1987, as amended at 54 FR 29709, July 14, 1989]

§ 226.4 Marketing and Communications Group.

(a) *General.* The Marketing and Communications Group is headed by an SAPMG. The group consists of three departments, each reporting to the SAPMG.

(b) *Marketing Department.* The Marketing Department is responsible for:

(1) Market research, market analysis, customer feedback, and marketing management information system support.

(2) Product analysis, planning, development, and program management activities, including the development of advertising and sales promotion support.

(3) Development and management of sales and sales promotion programs that support implementation by the field marketing organization of programs designed for principal customer segments of national, key, major, and local accounts.

(c) *Communications Department.* The Communications Department is responsible for:

(1) Planning, approving, and managing public affairs programs.

(2) Providing information to employees through in-house publication of newsletters, posters, films, videotapes, and other periodicals.

(3) Providing senior management with assistance in the development and production of presentations and speeches.

(d) *Philatelic and Retail Services Department.* The Philatelic and Retail Services Department is responsible for:

(1) Designing, manufacturing, and distributing postage stamps and stationery items.

(2) Establishing and implementing philatelic marketing programs.

(3) Managing mail order services for philatelic products.

(4) Managing special programs to promote philately and philatelic products and services.

(5) Establishing policy, business strategy, and procedures for the retail sale of postal services, products, and postage and the acceptance of mail at retail outlets.

(e) *Technology Resource Department.* The Technology Resource Department is headed by the Consumer Advocate who reports to the Associate Postmaster General, and is responsible for:

(1) Developing long-term technology development plans to meet changing technological trends and developments.

(2) Managing research and development directed to the application of new concepts to Postal Service functions.

(3) Monitoring the technological interaction between the Postal Service and the outside environment. Responding to customer inquiries and complaints regarding postal products and services.

(f) *Consumer Affairs Department.* The Consumer Affairs Department is headed by the Consumer Advocate who reports to the Associate Postmaster General (Systems), and is responsible for:

(1) Responding to customer inquiries and complaints regarding postal products and services.

(2) Developing, with the Communications Department, programs to inform the public on mailing programs, procedures, and policies.

(3) Tracking service problems and identifying trends to resolve operating programs.

[52 FR 46999, Dec. 11, 1987, as amended at 54 FR 29709, July 14, 1989]

§ 226.5 Associate Postmaster General (International).

(a) *General.* The Associate Postmaster General (International) is responsible for directing activities designed to increase international postal business, and for the relationship with foreign postal administrations.

(b) *International Postal Affairs Department.* The International Postal Affairs Department reports to the Associate Postmaster General (International) and is responsible for:

(1) Representing the United States in the Universal Postal Union (UPU) and the Postal Union of the Americas and Spain (PUAS).

(2) Providing liaison with all foreign postal administrations.

(3) Negotiating bilateral and multilateral postal treaties and agreements with foreign governments.

(4) Providing policy guidance on all aspects of international postal affairs.

[54 FR 29709, July 14, 1989]

PART 227—HEADQUARTERS RELATED FIELD UNITS

Sec.

227.1 General.
227.2 Inspection Service.
227.3 Procurement and Supply Department.
227.4 Engineering and Technical Support Department.
227.5 Employee Relations Department.
227.6 Training and Development Department.
227.7 Information Resource Management Department.
227.8 Operations Systems and Performance Department.
227.9 General Counsel.
227.10 Controller Department.
227.11 Philatelic and Retail Services Department.

AUTHORITY: 39 U.S.C. 401, 402, 403, and 404.

SOURCE: 52 FR 47000, Dec. 11,1987, unless otherwise noted

§ 227.1 General.

Headquarters Related Field Units are typically single function organizations that report directly to Headquarters and serve the entire Postal Service.

[52 FR 47000, Dec. 11, 1987, as amended at 54 FR 29709, July 14, 1989]

§ 227.2 Inspection Service.

(a) *General.* The Inspection Service is divided into regional and divisional entities.

(b) *Inspection Service—Region.* The Inspection Service at the regional level is responsible for:

(1) Protecting the mails, enforcement Postal laws, facility and employee security, and internal auditing.

(2) Managing the accomplishment of national programs and policies.

(3) Coordinating with other law enforcement organizations on security, audit, and other law enforcement matters.

(c) *Inspection Service—Division.* The Inspection Service at the division level is responsible for all inspection and investigation activities within the division area served.

[52 FR 47000, Dec. 11, 1987, as amended at 54 FR 29709, July 14, 1989]

§ 227.3 Procurement and Supply Department.

(a) *Materiel Distribution Centers.* There are two materiel distribution centers, one at Somerville, New Jersey, and one at Topeka, Kansas. Materiel Distribution Centers are responsible for:

(1) Procuring, storing, and issuing basic supplies for use in all postal facilities.

(2) Arranging for the transportation of supplies to facilities.

(b) *Mail Equipment Shop.* The Mail Equipment Shop, located in Washington, DC, is responsible for:

(1) Manufacturing mail bags, sacks, and pouches.

(2) Manufacturing locks and keys.

(3) Manufacturing hardware items used for mail security and for customer service lobby equipment.

[54 FR 29709, July 14, 1989]

§ 227.4 Engineering and Technical Support Department.

(a) *Maintenance Technical Support Center (MTSC).* The Maintenance Technical Support Center, located in Norman, OK, is responsible for:

(1) Developing policies, programs, methods, and standards for the maintenance of mail processing equipment.

(2) Issuing guidelines to field managers on building systems and mail processing equipment maintenance procedures.

(b) *Engineering and Development Center.* The Engineering and Development Center, located in Merrifield, Virginia, is responsible for:

(1) Providing engineering and near-term development support for letter mail equipment, packaged mail equipment, delivery and retail equipment, and associated systems and software.

(2) Directing near-term development and modifications to equipment and components to increase efficiency, reliability, and to improve safety.

(3) Conducting tests to evaluate new equipment for Postal service use; performing failure analyses on equipment and components.

(4) Providing applied engineering to customize commercial technology and equipment for postal use.

[54 FR 29710, July 14, 1989]

§ 227.5 Employee Relations Department.

National Test Administration Center (NTAC). The National Test Administration Center, located in Alexandria, VA, is responsible for:

(a) Receipt and processing of requests to give examinations.

(b) Preparing and distributing registers of eligible applicants and notices of ratings.

[54 FR 29710, July 14, 1989]

§ 227.6 Training and Development Department.

(a) *Technical Training Center.* The Technical Training Center, located in Norman, OK, is responsible for:

(1) Developing training materials for craft employees in maintenance and related crafts.

(2) Performing training for technical employees.

(b) *William F. Bolger Management Academy.* The William F. Bolger Management Academy, located in Potomac, MD, is responsible for:

(1) Developing training materials for supervisors, postmasters, and other managerial employees.

(2) Performing training for managerial employees.

[54 FR 29710, July 14, 1989]

§ 227.7 Information Resource Management Department.

(a) *National Information Systems Support Center.* The National Information Systems Support Center, located in Raleigh, NC, is responsible for:

(1) Designing new large-scale automated systems and writing the supporting program code.

(2) Managing the nationwide voice and data communications system.

(b) *Postal Data Centers.* The Postal Data Centers, located in Minneapolis, MN, New York, NY, St. Louis, MO, San Mateo, CA, and Wilkes-Barre, PA, are responsible for:

(1) Systems analysis, computer programming, and other systems development activities.

(2) Accounting, accounts payable, payroll, money order disbursing, claims and loss settlement, and other financial services.

(3) Data processing and related computer services.

[54 FR 29710, July 14, 1989]

§ 227.8 Operations Systems and Performance Department.

Address Information Center. The Address Information Center, located in Memphis, TN, is responsible for:

(a) Developing policies for and providing technical guidance and computer support to field address Information Systems units and field Computerized Forwarding System units.

(b) Providing nationwide service and technical guidance for postal customers requiring support related to address information systems.

[54 FR 29710, July 14, 1989]

§ 227.9 General Counsel.

Regional Counsels. The Regional Counsels are responsible for providing legal representation services within a regional geographic area, including representation before the Board of Contract Appeals, liaison with U.S. Attorneys on contract, real estate, and tort litigation, as well as personnel related matters, such as labor/management relations, Equal Employment Opportunity, Merit Systems Protection Board, National Labor Relations Board, and district court actions.

[54 FR 29710, July 14, 1989]

§ 227.10 Controller Department.

International Accounts Center. The International Accounts Center, located in New York, NY, is responsible for reviewing, approving, settling, and auditing international mail handling and transportation accounts for contracts and agreements entered into by the Postal service.

[54 FR 29710, July 14, 1989]

§ 227.11 Philatelic and Retail Services Department.

(a) *Philatelic Units.* The Philatelic Sales Division, located in Merrifield, VA, is a large mail and telephone order sales operation for stamps and other philatelic products; it is supported by an order fulfillment unit in Kansas City, MO, which is responsible for the filling and shipping of domestic and international mail orders for philatelic products.

(b) *Stamped Envelope Unit.* The Stamped Envelope Unit, located in Williamsburg, PA, processes, distributes, and certifies billing or postmaster accountability for direct orders of all stamped envelope products marketed by the Postal service.

[54 FR 29710, July 14, 1989]

PART 228—SERVICE CENTERS

Sec.

228.1 General.
228.2 Engineering and Technical Support Department—Maintenance Overhaul and Technical Service Centers (MOTSC).
228.3 Delivery, Distribution, and Transportation Department—Transportation Management Service Centers (TMSC).
228.4 Facilities Department—Facilities Service Centers.
228.5 Procurement and Supply Department—Procurement and Materiel Management Service Centers.
228.6 Rates and Classification Department.

228.7 Human Resources Group.

Authority: 39 U.S.C. 401, 402, 403, and 404.

Source: 52 FR 47001, Dec. 11, 1987, unless otherwise noted.

§ 228.1 General.

Service Centers typically serve a regional area only and report to headquarters, providing technical guidance and support to field division employees and carrying out the day-to-day responsibilities of a function.

§ 228.2 Engineering and Technical Support Department—Maintenance Overhaul and Technical Service Centers (MOTSC).

Maintenance Overhaul and Technical Service Centers are responsible for:

(a) Refurbishing mail processing equipment such as letter sorting machines, facer cancellers, and related equipment.

(b) Providing technical advice and guidance to field maintenance employees on procedures and practices to follow.

[54 FR 29710, July 14, 1989]

§ 228.3 Delivery, Distribution, and Transportation Department—Transportation Management Service Centers (TMSC).

Transportation Management Service Centers are responsible for:

(a) Procuring mail transportation services between mail processing centers.

(b) Controlling the inventory of empty mail equipment.

(c) Coordinating the movement of mail between mail processing centers, bulk mail centers (BMCs), management sectional centers (MSCs), and field divisions.

[54 FR 29710, July 14, 1989]

§ 228.4 Facilities Department—Facilities Service Centers.

Facilities Service Centers are responsible for:

(a) Developing functional design specifications for new or altered facilities.

(b) Investigating and evaluating sites for proposed postal facilities.

(c) Purchasing, leasing, disposing of and managing real estate and facilities.

(d) Contracting for the design and construction of facilities.

[54 FR 29710, July 14, 1989]

§ 228.5 Procurement and Supply Department—Procurement and Materiel Management Service Centers.

Procurement and Materiel Management Service Centers are responsible for:

(a) Contracting for supplies, services and equipment.

(b) Maintaining systems for inventorying equipment and supplies.

[54 FR 29711, July 14, 1989]

§ 228.6 Rates and Classification Department.

Rates and Classification Service Centers are responsible for:

(a) Managing, for a geographic area the rates and classification activities related to rates schedules, mail classification, and statistical systems, including guiding and monitoring bulk mail acceptance, mailing requirements, data collection programs in divisions, and providing classification rulings.

(b) Providing decisions on authorizations and rulings that enable customers to exercise mailing privileges for various classes of mail and service.

[54 FR 29711, July 14, 1989]

§ 228.7 Human Resources Group.

Human Resources Service Centers are responsible for:

(a) Processing personnel actions and maintaining personnel records for the regional office and the service centers.

(b) Implementing the Human Resources Information System (HRIS) in the field and training all users.

(c) Providing administrative support, technical guidance, and case processing for Equal Employment Opportunity (EEO), Merit Systems Protection Board (MSPB), and nonbargaining appeals.

(d) Overseeing all safety and health programs and issues, and responding to incidents or inquiries involving industrial hygiene.

(e) Coordinating the scheduling of all arbitration cases with arbitrators, union representatives, and field employees.

[54 FR 29711, July 14, 1989]

PART 229—FIELD ORGANIZATIONS

Sec.

229.1 Regions.
229.2 Field Divisions.
229.3 Management Sectional Centers (MSCs).
229.4 Other Field Organizations.

AUTHORITY: 39 U.S.C. 401, 402, 403, and 404.

SOURCE: 52 FR 47002, Dec. 11, 1987, unless otherwise noted.

§ 229.1 Regions.

(a) *General.* The Regions are responsible for monitoring the performance of postal operations; assessing long-term solutions to operating problems; and performing long-range operational planning.

(b) *Functional Units.* Each region is headed by a Regional Postmaster General who reports to the Deputy Postmaster General. Each region is organized into five functions: Finance, Human Resources, Marketing and Communications, Operations Support, and Planning, as follows:

(1) Finance is responsible for all accounting, budgeting, financial analysis, and management information programs.

(2) Human Resources is responsible for all employee and labor relations programs.

(3) Marketing and Communications is responsible for commercial accounts and merchandising programs, market and product analysis, and for providing information to the public and employees.

(4) Operations Support is responsible for operations planning and monitoring the performance of the mail processing network.

(5) Planning is responsible for long-range planning for the region and for support services to the regional building.

(c) *Regional areas.*—(1) *Central region.* The headquarters for the Central Region is in Chicago, IL. The regional area is made up of the states of Colorado, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, South Dakota, Wisconsin, and Wyoming.

(2) *Eastern region.* The headquarters for the Eastern Region is in Philadelphia, PA. The regional area is made of the states of Delaware, Kentucky, Maryland, New Jersey (ZIP Code areas 080-084, 189, 193 and 194), North Carolina, Ohio, South Carolina (except ZIP Code areas 298 and 299), Virginia, West Virginia and Washington, DC.

(3) *Northeast region.* The headquarters for the Northeast Region is in Windsor, CT. The regional area is made up of the states of Connecticut, Maine, Massachusetts, New Jersey (ZIP Code areas 074-079 and 085-089) New York, Rhode Island, Vermont and Puerto Rico.

(4) *Southern region.* The headquarters for the Southern Region is in Memphis, TN. The regional area is made up of the states of Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, Oklahoma, South Carolina (ZIP Code areas 298 and 299), Tennessee and Texas (except ZIP Code areas 797-799).

(5) *Western region.* The headquarters for the Western Region is in San Bruno, CA. The regional area is made up of the states of Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Texas (ZIP areas 797-799), Utah and Washington.

[52 FR 47002, Dec. 11, 1987, as amended at 54 FR 29711, July 14, 1989]

§ 229.2 Field Divisions.

(a) *General.* The field divisions are responsible for the day-to-day management of all operations and facilities within a geographic area. Each field division is headed by a Field Division General Manager/Postmaster who reports to the Regional Postmaster General.

(b) *Functional Units.* Each division is organized into seven functions: Controller, City Operations, Operations Support, Marketing and Communications, Human Resources, Support Services, and Field Operations. Responsibilities are as follows:

(1) The Controller is responsible for the operation of all management information systems, accounting services, timekeeping, financial analysis, auditing, compliance, and statistical programs.

(2) City Operations is responsible for all mail processing within the host Field Division facility, including stations and branches and air mail operations; fleet operations; and plant and equipment engineering.

(3) Operations Support is responsible for providing staff support to the operations function. The functions in operation support include logistics and distribution systems management, industrial engineering, address information programs, delivery services programs and maintenance support.

(4) Marketing and Communications plans and implements Postal Service marketing strategies, account management, technical sales support, retail marketing, communications programs, merchandising and sales information systems, and employee communications and community relations. It directs the consumer affairs program, provides marketing data to operations and other functional areas on customer demand, and recommends locations of retail facilities, hours of operation, collection boxes, and similar retail and delivery programs.

(5) Human Resources is responsible for labor relations, EEO complaint processing, employment and development, training, compensation and staffing, affirmative action, and safety and health.

(6) Support Services is responsible for procurement; materiel management; purchase, lease, and management of real estate and facilities; and design and construction of new and altered facilities.

(7) Field Operations is responsible for the management and evaluation of grade 24 and below associate offices that report to the host division. This includes the development of operating budgets and disbursement of funds; investigation and correction of operational, service, budget, productivity and efficiency problems; and providing technical assistance.

[52 FR 47002, Dec. 11, 1987, as amended at 54 FR 29711, July 14, 1989]

§ 229.3 Management Sectional Centers (MSCs).

(a) *General.* Each Management Sectional Center is headed by an MSC Manager/Postmaster who reports to a Field Division General Manager/Postmaster.

(b) *Functional Units.* Each Management Sectional Center is organized into six functions: Finance, City Operations, Operations Services, Marketing, Human Resources, and Field Operations, as follows:

(1) Finance is responsible for the operation of all management information systems, accounting and budget, timekeeping, financial analysis, statistical programs, procurement and office services, auditing, and compliance.

(2) City Operations is responsible for all mail processing within the MSC facility including stations and branches and air mail operations; plant and equipment engineering; fleet operations; vehicle operations and maintenance.

(3) Operations Services is responsible for providing staff support to the operations function. The primary functions in operations services include quality control, logistics, address information systems, delivery services, and industrial engineering.

(4) Marketing plans and implements Postal Service marketing strategies, account management, technical sales support, retail marketing, merchandising and sales information systems. It provides marketing data to operations and other functional areas on customer demand, and recommends locations of retail facilities, hours of operation, collection boxes, and similar retail and delivery programs.

(5) Human Resources is responsible for labor relations, EEO complaint processing, employment and development, training, compensation and staffing, affirmative action, and safety and health.

(6) Field Operations is responsible for the management and evaluation of associate offices that report to the Management Sectional Center. This includes the development of operating budgets and disbursement of funds; investigation and correction of operational, service, budget, productivity

and efficiency problems; and providing technical assistance. Larger associate offices report to the MSC Manager/Postmaster as follows:

(i) MSC V—Associate Office, level 22 and above.

(ii) MSC IV—Associate Office, level 21 and above.

(iii) MSC III—Associate Office, level 20 and above.

[54 FR 29711, July 14, 1989]

§ 229.4 Other Field Organizations.

(a) *Bulk Mail Centers (BMCs).* Bulk Mail Centers serve a specific geographic area and are headed by a manager who reports to the Field Division General Manager/Postmaster. BMCs are responsible for processing certain types of second- and third-class mail in bulk form and parcel post mail, normally in bulk or piece form.

(b) *Associate Offices.* Associate offices are headed by a postmaster who reports to a Director, Field Operations, in an MSC or a field division. Associate offices are responsible for the receipt, delivery, and dispatch of all classes of mail for geographic areas normally encompassing the boundaries of a city or town.

[54 FR 29711, July 14, 1989]

Inspection Service Requirements

PART 231—PROTECTION OF POST OFFICES

Sec.
231.1 Responsibility.
231.2 Security Control Officer.

§ 231.1 Responsibility.

(a) The protection of mail, postal funds, and property is a responsibility of every postal employee.

(b) The Chief Postal Inspector is designated as the Security Officer for the U.S. Postal Service. That official is responsible for the issuance of instructions and regulations pertaining to security requirements within the Postal Service.

(39 U.S.C. 401)

[36 FR 4762, Mar. 12, 1971]

§ 231.2 Security Control Officer.

The postmaster or a supervisor designated by the postmaster shall act as Security Control Officer for each post office. The Security Control Officer shall be responsible for the general security of the post office, its stations and branches, in accordance with rules and regulations issued by the Chief Postal Inspector.

(39 U.S.C. 401)

[36 FR 4762, Mar. 12, 1971]

PART 232—CONDUCT ON POSTAL PROPERTY

AUTHORITY: 39 U.S.C. 401, 403(b)(3), 404(a)(7); 40 U.S.C. 318, 318a, 318b, 318c; sec. 608, Treasury, Postal Service and General Government Appropriations Act, 1990, Pub. L. 101-136; 18 U.S.C. 13, 3061; 21 U.S.C. 802, 844.

§ 232.1 Conduct on postal property.

(a) *Applicability.* This section applies to all real property under the charge and control of the Postal Service, to all tenant agencies, and to all persons entering in or on such property. This section shall be posted and kept posted at a conspicuous place on all such property.

(b) *Inspection, recording presence.* (1) Purses, briefcases, and other containers brought into, while on, or being removed from the property are subject to inspection. However, items brought directly to a postal facility's customer mailing acceptance area and deposited in the mail are not subject to inspection, except as provided by section 115 of the Domestic Mail Manual. A person arrested for violation of this section may be searched incident to that arrest.

(2) Except as otherwise ordered, properties must be closed to the public after normal business hours. Properties also may be closed to the public in emergency situations and at such other times as may be necessary for the orderly conduct of business. Admission to properties during periods when such properties are closed to the public may be limited to authorized individuals who may be required to sign the register and display identification documents when requested by security force personnel or other authorized individuals.

(c) *Preservation of property.* Improperly disposing of rubbish, spitting, creating any hazard to persons or things, throwing articles of any kind from a building, climbing upon the roof or any part of a building, or willfully destroying, damaging, or removing any property or any part thereof, is prohibited.

(d) *Conformity with signs and directions.* All persons in and on property shall comply with official signs of a prohibitory or directory nature, and with the directions of security force personnel or other authorized individuals.

(e) *Disturbances.* Disorderly conduct, or conduct which creates loud and unusual noise, or which obstructs the usual use of entrances, foyers, corridors, offices, elevators, stairways, and parking lots, or which otherwise tends to impede or disturb the public employees in the performance of their duties, or which otherwise impedes or disturbs the general public in transacting business or obtaining the services provided on property, is prohibited.

(f) *Gambling.* Participating in games for money or other personal property, the operation of gambling devices, the conduct of a lottery or pool, or the selling or purchasing of lottery tickets, is prohibited on postal premises. This prohibition does not apply to the vending or exchange of State Lottery tickets at vending facilities operated by licensed blind persons where such lotteries are authorized by state law. (See Domestic Mail Manual 123.351 and 123.42; Administrative Support Manual 221.42; Regional Instructions, Part 782, section IV G 2c.)

(g) *Alcoholic beverages and drugs.* A person under the influence of an alcoholic beverage or any drug which has been defined as a "controlled substance" may not enter postal property or operate a motor vehicle on postal property. The possession, sale, or use of any "controlled substance" (except when permitted by law) or the sale or use of any alcoholic beverage (except as authorized by the Postmaster General or designee) on postal premises is prohibited. The term "controlled substance" is defined in section 802 of title 21 U.S.C.

(h) *Soliciting, electioneering, collecting debts, vending, and advertising.* (1) Soliciting alms and contributions, campaigning for election to any public office, collecting private debts, commercial soliciting and vending, and displaying or distributing commercial advertising on postal premises are prohibited. This prohibition does not apply to:

(i) Commercial activities performed under contract with the Postal Service or pursuant to the provisions of the Randolph-Sheppard Act;

(ii) Posting notices on bulletin boards as authorized in § 243.2(a) of this chapter;

(iii) The solicitation of Postal Service and other Federal military and civilian personnel for contributions by recognized agencies as authorized by the Manual on Fund Raising Within the the Federal Service, issued by the Chairman of the U.S. Civil Service Commission under Executive Order 10927 of March 13, 1961.

(2) Solicitations and other actions which are prohibited by paragraph (h)(1) of this section when conducted on Postal Service property should not be directed by mail or telephone to postal employees on Postal Service property. The Postal Service will not accept or distribute mail or accept telephone calls directed to its employees which are believed to be contrary to paragraph (h)(1) of this section.

(i) *Photographs for news, advertising, or commercial purposes.* Except as prohibited by official signs or the directions of security force personnel or other authorized personnel, or a Federal court order or rule, photographs for news purposes may be taken in entrances, lobbies, foyers, corridors, or auditoriums when used for public meetings. Other photographs may be taken only with the permission of the local postmaster or installation head.

(j) *Dogs and other animals.* Dogs, except seeing-eye dogs, and other animals, shall not be brought upon property for other than official purposes.

(k) *Vehicular and pedestrian traffic.* (1) Drivers of all vehicles in or on property shall drive in a careful and safe manner at all times and shall comply with the signals and directions of security force personnel, other authorized individuals, and all posted traffic signs.

(2) The blocking of entrances, driveways, walks, loading platforms, or fire hydrants in or on property is prohibited.

(3) Parking without authority, parking in unauthorized locations or in locations reserved for other persons, or continuously in excess of 18 hours without permission, or contrary to the direction of posted signs is prohibited. This section may be supplemented by the postmaster or installation head from time to time by the issuance and posting of specific traffic directives as may be required. When so issued and posted such directives shall have the same force and effect as if made a part hereof.

(l) *Weapons and explosives.* No person while on property shall carry firearms, other dangerous or deadly weapons, or explosives, either openly or concealed, except for official purposes.

(m) *Nondiscrimination.* There must be no discrimination by segregation or otherwise against any person or persons because of race, color, religion, national origin, sex, age (persons 40 years of age or older are protected), reprisal (discrimination against a person for having filed or for having participated in the processing of an EEO complaint—29 CFR 1613.261-262), or physical or mental handicap, in furnishing, or by refusing to furnish to such person or persons the use of any facility of a public nature, including all services, privileges, accommodations, and activities provided on postal property.

(n) *Conduct with regard to meetings of the Board of Governors.* (1) Without the permission of the chairman no person may participate in, film, televise, or broadcast any portion of any meeting of the Board or any subdivision or committee of the Board. Any person may electronically record or photograph a meeting, as long as that action does not tend to impede or disturb the members of the Board in the performance of their duties, or members of the public while attempting to attend or observe a meeting.

(2) Disorderly conduct, or conduct which creates loud or unusual noise, obstructs the ordinary use of entrances, foyers, corridors, offices, meeting rooms, elevators, stairways, or parking lots, or otherwise tends to impede or disturb the members of the Board in the performance of their duties, or members of the public while attempting to attend or observe a meeting of the Board or of any subdivision, or committee of the Board, is prohibited.

(3) Any person who violates paragraph (n) (1) or (2) of this section may, in addition to being subject to the penalties prescribed in paragraph (p) of this section, be removed from and barred from reentering postal property during the meeting with respect to which the violation occurred.

(4) A copy of the rules of this section governing conduct on postal property, including the rules of this paragraph appropriately highlighted, shall be posted in prominent locations at the public entrances to postal property and outside the meeting room at any meeting of the Board of Governors or of any subdivision or committee of the Board.

(o) *Depositing literature.* Depositing or posting handbills, flyers, pamphlets, signs, poster, placards, or other literature, except official postal and other Governmental notices and announcements, on the grounds, walks, driveways, parking and maneuvering areas, exteriors of buildings and other structures, or on the floors, walls, stairs, racks, counters, desks, writing tables, window-ledges, or furnishings in interior public areas on postal premises, is prohibited. This prohibition does not apply to:

(1) Posting notices on bulletin boards as authorized in § 243.2(a) of this chapter;

(2) Interior space assigned to tenants for their exclusive use;

(3) Posting of notices by U.S. Government-related organizations such as the Inaugural Committee as defined in 36 U.S.C. 721.

(p) *Penalties and other law.* (1) Alleged violations of these rules and regulations are heard, and the penalties prescribed herein are imposed, either in a Federal district court or by a Federal magistrate in accordance with applicable court rules. Questions regarding such rules should be directed to the regional counsel for the region involved.

(2) Whoever shall be found guilty of violating the rules and regulations in this section while on property under the charge and control of the Postal Service is subject to fine of not more than $50 or imprisonment of not more than 30 days, or both. Nothing contained in these rules and regulations shall be construed to abrogate any other Federal laws or regulations of any State and local laws and regulations applicable to any area in which the property is situated.

(q) *Enforcement.* (1) Members of the U.S. Postal Service security force shall exercise the powers of special policemen provided by 40 U.S.C. 318 and shall be responsible for enforcing the regulations in this section in a manner that will protect Postal Service property.

(2) Local postmasters and installation heads may, pursuant to 40 U.S.C. 318b and with the approval of the chief postal inspector or his designee, enter into agreements with State and local enforcement agencies to insure that these rules and regulations are enforced in a manner that will protect Postal Service property.

(3) Postal Inspectors may likewise enforce regulations in this section.

[37 FR 24346, Nov. 16, 1972, as amended at 38 FR 27824, Oct. 9, 1973; 41 FR 23955, June 14, 1976; 42 FR 17443, Apr. 1, 1977; 43 FR 38825, Aug. 31, 1978; 46 FR 898, Jan. 5, 1981. Redesignated and amended at 46 FR 34330, July 1, 1981; 47 FR 32113, July 26, 1982; 53 FR 29460, Aug. 5, 1988; 54 FR 20527, May 12, 1989]

PART 233—INSPECTION SERVICE AUTHORITY

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AUTHORITY: 39 U.S.C. 101, 401, 402, 403, 404, 406, 410, 411, 3005(e)(1); 12 U.S.C. 3401-3422; 18 U.S.C. 981, 1956, 1957, 2254; 21 U.S.C. 881.

§ 233.1 Arrest and subpoena powers of postal inspectors.

(a) *Authorization.* Postal Inspectors are authorized to perform the following functions in connection with any matter within their respective official duties as established by the Chief Postal Inspector.

(1) Serve warrants and subpenas issued under the authority of the United States;

(2) Make arrests without warrant for offenses against the United States committed in their presence; and

(3) Make arrests without warrant for felonies cognizable under the laws of the United States if they have reasonable grounds to believe that the person to be arrested has committed or is committing such a felony.

(b) *Limitations.* The powers granted by paragraph (a) of this section shall be exercised only in the enforcement of laws regarding property of the United States in the custody of the Postal Service, including property of the Postal Service, the use of the mails, and other postal offenses.

(c) *Issuance.* The Chief Postal Inspector, in accordance with Part 273 of this title, may issue documentary subpoenas under the Program Fraud Civil Remedies Act.

[36 FR 4762, Mar. 12, 1971, as amended at 38 FR 19124, July 18, 1973. Redesignated at 46 FR 34330, July 1, 1981; 52 FR 12901, Apr. 20, 1987]

§ 233.2 Circulars and rewards.

(a) *Wanted circulars.* The Inspection Service issues wanted circulars to assist in locating and arresting fugitive postal offenders. Post these circulars in the most conspicuous place in the post office lobby and in other prominent places. Post near the Notice of

Reward sign. Telephone or telegraph immediately to the postal inspector in charge any information on the possible location of the person wanted. Remove and destroy circulars immediately when notified of their cancellation or when the circular is not listed in the periodic Postal Bulletin notices of current wanted circulars.

(b) *Rewards.* (1) Rewards will be paid in the amounts and under the conditions stated in Notice 96, *Notice of Reward,* for the arrest and conviction of persons for the following postal offenses:

(i) Robbery or attempted robbery.

(ii) Mailing bombs, explosives, poison, or controlled substances.

(iii) Post office burglary.

(iv) Stealing or unlawful possession of mail or money or property of the United States under the custody or control of the Postal Service, including property of the Postal Service.

(v) Destroying, obstructing or retarding the passage of mail.

(vi) Altering, counterfeiting, forging, unlawful uttering or passing of postal money orders; or the unlawful use, counterfeiting or forgery of postage stamps or other postage; or the use, sale or possession with intent to use or sell, any forged or counterfeited postage stamp or other postage.

(vii) Assault on postal employee.

(viii) Murder or manslaughter of a postal employee.

(ix) Mailing or receiving through the mail any visual depiction involving the use of a minor engaging in sexually explicit conduct.

(2) The postmaster or a designated employee should personally present reward notices to representatives of firms transporting mail, security or detective units of firms, police officers, sheriffs and their deputies, if practicable, and encourage their cooperation in protecting mail and Postal Service property. (See 273.14 of the Administrative Support Manual).

NOTE: The text of Notice 96, referred to in paragraph (b)(1) of this section, reads as follows:

The United States Postal Service offers a reward up to the amounts shown for information and services leading to the arrest and conviction of any person for the following offenses:

Murder or Manslaughter, $25,000. The unlawful killing of any officer or employee of the Postal Service while engaged in or on account of the performance of their official duties.

Robbery, $10,000. Robbery or attempted robbery of any custodian of any mail, or money or other property of the United States under the control and jurisdiction of the United States Postal Service, if such custodian is wounded or killed, or the custodian's life jeopardized; but not to exceed $5,000 if the custodian is not wounded or killed, or his life jeopardized.

Bombs or Explosives, $10,000. Mailing or causing to be mailed any bombs or explosives which may kill or harm another, or injure the mails or other property, or the placing of any bomb or explosive in a postal facility, vehicle, depository or receptacle established, approved or designated by the Postmaster General for the receipt of mail.

Assault on Postal Employees, $5,000. Forcibly assaulting any officer or employee of the Postal Service while engaged in or on account of the performance of their official duties; but not to exceed $1,000 if there is no deadly weapon used.

Burglary of Post Office, $5,000. Breaking into, or attempting to break into a post office, station, branch, or a building used wholly or partially as a post office with intent to commit a larceny or other depredation in that part used as a post office.

Child Pornography, $2,500. The mailing or receiving through the mail of any visual depiction involving the use of a minor engaging in sexually explicit conduct.

Poisons, Controlled Substances, or Hazardous Materials, $1,000. Mailing or causing to be mailed any poison, controlled substances or hazardous materials.

Theft of Mail, $1,000. Theft or attempted theft of any mail, or the contents thereof, or the theft of money or any other property of the United States under the custody and control of the United States Postal Service from any custodian, postal vehicle, railroad depot, airport, or other transfer point, post office or station or receptacle or depository established, approved, or designated by the Postmaster General for the receipt of mail.

Offenses Involving Postal Money Orders or Postage, $1,000. Altering, counterfeiting, forging, unlawful uttering or passing of postal money orders; or the unlawful use, counterfeiting or forgery of postage stamps or other postage; or the use, sale or possession with intent to use or sell, any forged or counterfeited postage stamp or other postage.

Destruction or Obstruction of Mail, $1,000. Destroying, obstructing or retarding the passage of mail, or any carrier or conveyance carrying the mail.

RELATED OFFENSES

The United States Postal Service also offers rewards as stated above for information and services leading to the arrest and conviction of any person:

1. for being an accessory to any of the above crimes;
2. for receiving or having unlawful possession of any mail, money or property secured through the above crimes;
3. for conspiracy to commit any of the above crimes.

GENERAL PROVISIONS

1. The Postal Inspection Service investigates the above described crimes. Information concerning these violations, and requests for applications for rewards, should be furnished to the nearest Postal Inspector.
2. The term "custodian" as used herein includes any person having lawful charge, control, or custody of any mail matter, or any money or other property of the United States under the control and jurisdiction of the United States Postal Service.
3. The amount of any reward will be based on the importance of services rendered, character of the offender, risks and hazards involved, time spent, and expenses incurred. Amounts of rewards shown above are the maximum amounts which will be paid. Maximum rewards will be paid only when services rendered contributed significantly to the arrest and conviction of the offender.
4. The Postal Service reserves the right to reject a claim for reward where there has been collusion, criminal involvement, or improper methods have been used to effect an arrest or to secure a conviction. It has the right to allow only one reward when several persons were convicted of the same offense, or one person was convicted of several of the above offenses.
5. A written claim for reward payment must be submitted to the nearest Postal Inspector within six months from the date of conviction of the offender, or the date of formally deferred prosecution or the date of his death, if killed in committing a crime or resisting lawful arrest for one of the above offenses.

[36 FR 4673, Mar. 12, 1971, as amended at 42 FR 43836, Aug. 31, 1977. Redesignated at 46 FR 34330, July 1, 1981, and amended at 47 FR 26832, June 22, 1982; 47 FR 46498, Oct. 19, 1982; 49 FR 15191, Apr. 18, 1984; 54 FR 37795, Sept. 13, 1989]

§ 233.3 Mail covers.

(a) *Policy.* The U.S. Postal Service maintains rigid controls and supervision with respect to the use of mail covers as investigative or law enforcement techniques.

(b) *Scope.* These regulations con tute the sole authority and procedu for initiating, processing, placing using mail covers.

(c) *Definitions.* For purposes these regulations, the following ter are hereby defined:

(1) "Mail cover" is the proces which a record is made of any data pearing on the outside cover of class of mail matter, including chec ing the contents of any second-, third or fourth-class mail matter as sanctioned by law, in order to obt information in the interest of (i) tecting the national security, (ii) loc ing a fugitive, or (iii) obtaining dence of commission or attemp commission of a crime.

(2) "Fugitive" is any person who fled from the United States or State, territory, the District of Colu bia, or possession of the United Stat to avoid prosecution for a crime, avoid punishment for a crime or avoid giving testimony in a crimin proceeding.

(3) "Crime", for purposes of th regulations, is any commission of act or the attempted commission of act that is punishable by law by prisonment for a term exceeding year.

(4) "Law enforcement agency" is authority of the Federal Governme or any authority of a State or lo government one of whose functions to investigate the commission or tempted commission of acts constitu ing a crime.

(5) "To protect the national secu ty" means to protect the United Sta from any of the following actual or tential threats to its security by a eign power or its agents: (i) An atta or other grave hostile act; (ii) sab tage, or international terrorism; (iii) clandestine intelligence activitie

(d) *Authorizations—Chief Postal spector.* (1) The Chief Postal Inspect is the principal officer of the Pos Service in the administration of matters governing mail covers. He m delegate any or all authority in th regard to not more than two designe at Inspection Service Headquarte Except for national security covers, he may also delegate any or authority to the Regional Chief Pos

Inspectors. All such delegations of authority shall be issued through official directives.

(2) The Chief Postal Inspector, or his designee, may order mail covers under the following circumstances:

(i) When he has reason to believe the subject or subjects of the mail cover are engaged in any activity violative of any postal statute.

(ii) When written request is received from any law enforcement agency wherein the requesting authority stipulates and specifies the reasonable grounds that exist which demonstrate the mail cover is necessary to (A) protect the national security, (B) locate a fugitive, or (C) obtain information regarding the commission or attempted commission of a crime.

(iii) Where time is of the essence, the Chief Postal Inspector, or his designee, may act upon an oral request to be confirmed by the requesting authority in writing within 2 business days. However, no information shall be released until an appropriate written request is received.

(e) *Postal Inspectors in Charge.* (1) All Postal Inspectors in Charge, and not more than three designees pursuant to delegations in writing, may order mail covers within their districts under the following circumstances:

(i) Where he has reason to believe the subject or subjects are engaged in an activity violative of any postal statute.

(ii) Where written request is received from any law enforcement agency of the Federal, State, or local governments, wherein the requesting authority stipulates and specifies the reasonable grounds that exist which demonstrate the mail cover would aid in the location of a fugitive, or that it would assist in obtaining information concerning the commission or attempted commission of a crime.

(2) Except where mail covers are ordered by the Chief Postal Inspector, or his designee, requests for mail covers must be approved by the Postal Inspector in Charge, or his designee, in each district in which the mail cover is to operate.

(3) Where time is of the essence, the Postal Inspector in Charge, or his designee, may act upon an oral request to be confirmed by the requesting authority in writing within 2 business days. However, no information shall be released until an appropriate written order is received.

(f) A postal inspector, or a postal employee acting at the direction of a postal inspector, may record or copy the information appearing on the envelope or outer wrapping of mail, without obtaining a mail cover order, only under the following circumstances:

(1) The purpose must be to obtain evidence of a mail theft or embezzlement, or a depredation against the postal system or mail matter, constituting the commission or attempted commission of a postal crime; and,

(2) The mail must be either (i) undelivered mail found in the possession of a person reasonably believed to have stolen or embezzled such mail; or, (ii) damaged or rifled undelivered mail reasonably believed to be evidence of a postal crime against the security of the postal system (such as a post office break-in) or evidence of a postal crime against the security of mail matter (such as mail theft).

(g) *Limitations.* (1) No person in the Postal Service, except those employed for that purpose in dead-mail offices, may break or permit breaking of the seal of any matter mailed as first-class mail without a search warrant, even though it may contain criminal or otherwise unmailable matter, or furnish evidence of the commission of a crime.

(2) No mail covers shall include matter mailed between the mail cover subject and his known attorney-at-law.

(3) No officer or employee of the Postal Service other than the Chief Postal Inspector, or Postal Inspectors in Charge, and their designees, are authorized to order mail covers. Under no circumstances may a postmaster or postal employee furnish information as defined in § 233.3(c)(1) to any person, except as authorized by a mail cover order issued by the Chief Postal Inspector or a Postal Inspector in Charge or their designees, or as directed by a postal inspector only under the circumstances described in § 233.3(f).

(4) Excepting mail covers ordered upon subjects engaged, or suspected to be engaged, in any activity against the

national security, or activity violative of any postal law, no mail cover order shall remain in force and effect for more than 30 days. At the expiration of such period, or prior thereto, the requesting authority may be granted additional 30-day periods under the same conditions and procedures applicable to the original request.

(5) No mail cover shall remain in force longer than 120 days unless personally approved for further extension by the Chief Postal Inspector.

(6) Excepting fugitive cases, no mail cover shall remain in force when the subject has been indicted for any cause. If the subject is under investigation for further criminal violations, a new mail cover order must be requested consistent with these regulations.

(7) Any national security mail cover request must be approved personally by the head of the law enforcement agency requesting the cover.

(h) *Records.* (1) All requests for mail covers, with records of action ordered thereon, and all reports issued pursuant thereto, shall be deemed within the custody of the Chief Postal Inspector. However, the physical housing of this data shall be at the discretion of the Chief Postal Inspector.

(2) The Postal Inspectors in Charge shall promptly submit copies of all requests for mail covers and the determination made thereon to the Chief Postal Inspector, or to his designee for review.

(3) If the Chief Postal Inspector, or his designee, determines a mail cover was improperly ordered by a Postal Inspector in Charge or his designee all data acquired while the cover was in force shall be destroyed, and the requesting authority notified of the discontinuance of the mail cover and the reasons therefor.

(4) Any data concerning mail covers shall be made available to any mail cover subject in any legal proceeding through appropriate discovery procedures.

(5) The retention period for files and records pertaining to mail covers shall be 3 years.

(i) *Reporting to requesting authority.* Once a mail cover has been duly ordered, authorization may be delegated to any officer in the Postal Service to transmit mail cover reports directly to the requesting authority. Where at all possible, the transmitting officer should be a Postal Inspector.

(j) *Review.* (1) The Chief Postal Inspector, or his designee, shall review all actions taken by Postal Inspectors in Charge or their designees upon initial submission of a report on a request for mail cover.

(2) The Chief Postal Inspector's determination in all matters concerning mail covers shall be final and conclusive and not subject to further administrative review.

(k) *Military postal system.* Section 233.3 does not apply to the military postal system overseas or to persons performing military postal duties overseas. Information about regulations prescribed by the Department of Defense for the military postal system overseas may be obtained from the Department of Defense.

[40 FR 11579, Mar. 12, 1975, as amended at 44 FR 49690, Aug. 24, 1979. Redesignated at 46 FR 34330, July 1, 1981, and amended at 47 FR 46975, Oct. 21, 1982; 48 FR 56215, Dec. 20, 1983; 49 FR 22648, May 31, 1984]

§ 233.4 Withdrawal of mail privileges.

(a) *False representation and lottery orders*—(1) *Issuance.* Pursuant to 39 U.S.C. 3005, the Judicial Officer of the Postal Service, acting upon a satisfactory evidentiary basis, may issue a mail-stop order against anyone seeking mailed remittance of money or property by means of a false-representation or lottery scheme. Such orders provide for return of mail and refund of postal money orders to remitters.

(2) *Enforcement.* Notice of these orders, including any necessary instructions on enforcement responsibilities and procedures, is published in the Postal Bulletin. Generally, an order against a domestic enterprise is enforced only by the post office designated in the order. All personnel processing mail for dispatch abroad assist in enforcing orders against foreign enterprises by forwarding mail addressed to such enterprises to designated post offices.

(b) *Fictitious name or address and not residents of the place of address orders.* (1) *Issuance.* Pursuant to 39

U.S.C. 3003, 3004, when there is satisfactory evidence that mail is addressed to a fictitious name, title, or address used for any unlawful business, and no one has established a right to have the mail delivered to him, or that mail is addressed to places not the residence or regular business address of the person for whom they are intended to enable the person to escape identification, the Judicial Officer may, pursuant to Part 964, order that the mail be returned to the sender.

(2) *Notice.* (i) The Chief Postal Inspector or his delegate must give notice to the addressee of mail withheld from delivery pursuant to 39 U.S.C. 3003, 3004 that such action has been taken and advise him that he may:

(A) Obtain such mail upon presenting proof of his identity and right to receive such mail, or

(B) Petition the Judicial Officer for the return of such mail. (ii) The notice must be in writing and served by personal service upon the addressee or by Certified Mail (Return Receipt Requested) and by First Class Mail.

(3) *Enforcement.* Notice of any order issued pursuant to 39 U.S.C. 3003, 3004, and any necessary implementing instructions, are published in the Postal Bulletin.

[45 FR 1613, Jan. 8, 1980. Redesignated at 46 FR 34330, July 1, 1981, and amended at 53 FR 1780, Jan. 22, 1988]

§ 233.5 Requesting financial records from a financial institution.

(a) *Definitions.* The terms used in this section have the same meaning as similar terms used in the Right to Financial Privacy Act of 1978, Title XI of Pub. L. 95-630. *Act* means the *Right to Financial Privacy Act of 1978.*

(b) *Purpose.* The purpose of these regulations is: (1) To authorize the Inspection Service Department of the U.S. Postal Service to request financial records from a financial institution pursuant to the formal written request procedure authorized by section 1108 of the Act and (2) to set forth the conditions under which such request may be made.

(c) *Authorization.* The Inspection Service Department is authorized to request financial records of any customer from a financial institution pursuant to a formal written request under the Act only if:

(1) No administrative summons or subpoena authority reasonably appears to be available to the Inspection Service Department to obtain financial records for the purpose for which the records are sought;

(2) There is reason to believe that the records sought are relevant to a legitimate law enforcement inquiry and will further that inquiry;

(3) The request is issued by a supervisory official of a rank designated by the Chief Postal Inspector. Officials so designated shall not delegate this authority to others;

(4) The request adheres to the requirements set forth in paragraph (d) of this section; and

(5) The notice requirements set forth in section 1108(4) of the Act, or the requirements pertaining to the delay of notice in section 1109 of the Act, are satisfied, except in situations (*e.g.*, section 1113(g)) where no notice is required.

(d) *Written request.* (1) The formal request must be in the form of a letter or memorandum to an appropriate official of the financial institution and must contain:

(i) The signature of the issuing official and the official's name, title, business address, and business phone number;

(ii) The identity of the customer or customers to whom the records pertain;

(iii) A reasonable description of the records sought; and

(iv) Any additional information which may be appropriate—*e.g.*, the date when the opportunity for the customer to challenge the formal written request expires, the date when the Inspection Service Department expects to present a certificate of compliance with the applicable provisions of the Act, the name and title of the individual (if known) to whom disclosure is to be made.

(2) In cases where customer notice is delayed by court order, a copy of the court order must be attached to the formal written request.

(e) *Certification.* Before obtaining the requested records following a formal written request, a supervisory official authorized to issue a request must certify in writing to the financial institution that the Inspection Service Department has complied with the applicable provisions of the Act.

[44 FR 39161, July 5, 1979. Redesignated at 46 FR 34330, July 1, 1981]

§ 233.6 Test purchases under 39 U.S.C. 3005(e).

(a) *Scope.* This section, which implements 39 U.S.C. 3005(e), supplements any postal regulations or instructions regarding test purchases or test purchase procedures. It is limited to test purchases conducted according to 39 U.S.C. 3005(e).

(b) *Definitions*—(1) *Test purchase.* The acquisition of any article or service, for which money or property are sought through the mails, from the person or representative offering the article or service. The purpose is to investigate possible violations of postal laws.

(2) *Test Purchase Request.* A written document requesting the sale of an article or service pursuant to 39 U.S.C. 3005(e) and containing the following information:

(i) The name and address of the person, firm, or corporation to whom the request is directed;

(ii) The name, title, signature, office mailing address, and office telephone number of the person making the request;

(iii) A description of the article or service requested which is sufficient to enable the person to whom the request is made to identify the article or service being sought;

(iv) A statement of the nature of the conduct under investigation;

(v) A statement that the article or service must be tendered at the time and place stated in the purchase request, unless the person making the request and the person to whom it is made agree otherwise in writing;

(vi) A verbatim statement of 39 U.S.C. 3005, 3007; and

(vii) A statement that failure to provide the requested article or service may be considered in a proceeding under 39 U.S.C. 3007 to determine whether probable cause exists to believe that 39 U.S.C. 3005 is being violated.

(c) *Service of Test Purchase Request.* (1) The original of the Test Purchase Request must be delivered to the person, firm, or corporation to whom the request is made or to his or its representative. It must be accompanied by a check or money order in the amount for which the article or service is offered for sale, made payable to the person, firm or corporation making the offer.

(2) The person serving the Test Purchase Request must make and sign a record, stating the date and place of service and the name of the person served. The person making the request must retain a copy of the Test Purchase Request, the record of service, and the money order receipt or a photocopy of the issued check or the cancelled check. Alternatively, the request may be made by certified mail.

(d) *Authorizations.* The Chief Postal Inspector is the principal officer of the Postal Service for the administration of all matters governing test purchases under this section. The Chief Inspector may delegate any or all authority in this regard to any or all postal inspectors.

[49 FR 7230, Feb. 28, 1984; 49 FR 8250, Mar. 6, 1984]

§ 233.7 Forfeiture authority and procedures.

(a) *Designation of officials having forfeiture authority.* The Chief Postal Inspector is authorized to perform all duties and responsibilities necessary on behalf of the Postal Service to enforce 18 U.S.C. 981, 2254, and 21 U.S.C. 881 to delegate all or any part of this authority to Assistant Chief Inspectors, Inspectors in Charge, and Inspectors of the Postal Inspection Service, and to issue such instructions as may be necessary to carry out this authority.

(b) *Administrative forfeiture authority.* The Chief Postal Inspector is authorized to conduct administrative forfeitures under the statutes identified in paragraph (a) of this section, following, where applicable, the procedures provided by the customs laws of the United States (19 U.S.C. 1600 et *seq.*), and to pay valid liens and mortgages against property that has been so forfeited.

(c) *Inventory.* An inventory of all property seized for forfeiture under the statutes identified in paragraph (a) of this section shall be prepared and maintained by the Postal Inspection Service. The inventory should occur within seven days of the seizure. The inventory must, at a minimum, identify all property seized, state the exact location of the property at the time of its seizure, and describe in detail the condition of the property. A written receipt containing such information and identifying the Postal Inspector who conducted the seizure must be provided to the party from whom the property was seized, or the party's agent or representative, at the time of seizure or as soon thereafter as practical, but in no event more than ten days after the seizure.

(d) *Custody.* Custody of all property seized for forfeiture under the statutes identified in paragraph (a) of this section is maintained by the U.S. Marshals Service, except property held for evidentiary purposes; retained for official use upon forfeiture; subject to equitable transfer to federal, state or local law enforcement agencies; or subject to civil administrative forfeiture.

(e) *Appraisal.* The Postal Inspection Service must promptly obtain or complete an appraisal of all seized property. The appraisal value is the fair market value of the property, which is the highest price, in terms of money, which a property will bring in a competitive and open market.

(f) *Quick-release.* Property subject to administrative forfeiture may, prior to forfeiture, be released by the Postal Inspection Service to the owner of the property having an immediate right to possession of the property when the Postal Inspection Service concludes that release of the property is in the best interest of justice. An agreement to hold harmless the United States, the Postal Inspection Service, and all other involved entities should be obtained from the owner. A decision for quick release of the property should be made within five days of the seizure.

(g) *Judicial forfeiture.* If the appraised value of property seized exceeds $100,000 or if a claim and satisfactory bond have been received for property appraised at $100,000 or less, the Postal Inspection Service must transmit the claim and bond to the U.S. Attorney for the judicial district in which the seizure was made and request that the U.S. Attorney promptly institute a judicial forfeiture proceeding against the property. The Postal Inspection Service must provide the U.S. Attorney a complete written description of the property, a statement of the facts and circumstances leading to the seizure of the property, including all facts and documentation leading to the conclusion that the seized property is subject to forfeiture, and such additional information as the U.S. Attorney may require for the purpose of instituting a judicial forfeiture action.

(h) *Notice of seizure of property having a value of $100,000 or less; advertisement; declaration of forfeiture.* (1) The Postal Inspection Service must cause written notice of the seizure of all property subject to civil administrative forfeiture to be sent to each known party that may have a possessory or ownership interest in the seized property. The notice must describe the property seized; state the date, place, and statutory basis for seizure; provide a brief narration of the facts leading to the conclusion that the property is subject to forfeiture; and inform the party of the intent of the Postal Inspection Service to forfeit the property. In addition, the notice must state that any person desiring a judicial determination of forfeiture must file a claim and bond (see paragraph 2 of this subsection) with a designated official of the Postal Inspection Service, within twenty days from the date of the first publication of the notice of seizure (see paragraph (4) of this subsection), or of the date of the letter of personal notice required by this paragraph, whichever is later. Any claim submitted pursuant to this paragraph is invalid unless accompanied by a bond meeting the requirements of paragraph (2), or a completed PS Form 1518, *Petition to Proceed in Forma Pauperis.*

(2) A bond in the amount of $5,000 or ten percent of the value of the claimed property, whichever is lower, but in no event less than $250, must accompany any claim submitted pursuant to paragraph (1). The bond may be in the form of a cashier's check, certified check, or money order made payable to the United States of America, or satisfactory sureties. If a claimant is financially unable to post the bond because of indigency, such a person may request a waiver of the bond by completion of PS Form 1518, *Petition to Proceed in Forma Pauperis.*

(3) Upon receipt of the claim and bond, the Postal Inspection Service must, upon determining that the documents are in proper form and the sureties satisfactory, transmit the documents to the appropriate U.S. Attorney as provided in subsection (g). If the documents are not satisfactory, the Postal Inspection Service must notify the party making the claim and may allow a reasonable time for correction. If correction is not made within the time allowed for that purpose, the administrative forfeiture must proceed as though the claim and bond had not been tendered.

(4) Notice of administrative forfeiture proceedings containing the information required by subsection (h)(1) must be published once each week for at least three successive weeks in a newspaper of general circulation in the judicial district in which the property was seized. If a claim and satisfactory bond is not filed within the time allowed, the Postal Inspection Service may declare the property forfeited.

(i) *Disposition of forfeited property.* (1) Whenever property is forfeited administratively, the Postal Inspection Service may:

(i) Retain the property for official use;

(ii) Transfer ownership of the property to any federal, state or local law enforcement agency that participated in the investigation leading to the forfeiture;

(iii) Sell any property which is not required to be destroyed by law and which is not harmful to the public;

(iv) Destroy the property;

(v) Donate the property to a charitable organization; or

(vi) Dispose of the property as otherwise permitted by law.

(2) If the laws of a state in which an article of forfeited property is located prohibit the sale or possession of such property or if the Postal Service and the Marshals Service are of the opinion that it would be more advantageous to sell the forfeited property in another district, the property may be moved to and sold in such other district.

(3) If, after an administrative forfeiture of property is completed, it appears that the proceeds of sale will not be sufficient to pay the costs of sale or the proceeds will be insignificant in relation to the expenses involved in the forfeiture, then the Postal Service or the Marshals Service may order destruction or other disposition of the property including alteration of the property into an article that is not prohibited.

(j) *Remission or mitigation of forfeiture.* (1) Any person claiming a legal or equitable interest in any property which has been forfeited administratively pursuant to this section or is subject to such forfeiture may file in triplicate with the Postal Inspection Service a Petition for Remission or Mitigation of the forfeiture or a Petition for Restoration of the Proceeds of Sale for the value of forfeited property sold or placed into official use. The Petition must contain the information required by paragraph (2). The Petition must be addressed to the Chief Postal Inspector and must be executed and sworn to by the person alleging an interest in the property or by his counsel upon information and belief. If the forfeiture proceedings are judicial, the Petition must be addressed to the Attorney General of the United States and must be filed in triplicate with the Inspector in Charge of the Inspection Service field office that seized the property. The Petition pertaining to a judicial forfeiture must be executed and sworn to by the person alleging an interest in the property or by his counsel upon information and belief. The Petition must be forwarded promptly to the U.S. Attorney responsible for the judicial prosecution.

(2) All such Petitions must include, at a minimum, the following: (i) A complete description of the property, including model and serial numbers, if any; (ii) the date and place of seizure; (iii) the Petitioner's interest in the property, which must be supported by bills of sale, contracts, mortgages, or other satisfactory documentary evidence; and, (iv) any facts and circumstances, established by satisfactory proof, relied upon by the Petitioner to justify the granting of the Petition. For further information regarding the content of a Petition, see 28 CFR 9.5.

(3) Where the Petition is for the restoration of the proceeds of the sale of forfeited property or for the value of forfeited property placed into official use, it must be supported by satisfactory proof that the Petitioner did not know of the seizure or forfeiture prior to the declaration of forfeiture due to circumstances which prevented his acquiring such knowledge.

(4) A Petition for Remission or Mitigation of forfeiture must be filed within thirty days from the date of the personal notice letter or within thirty days from the date of publication notice. After property is disposed of, a Petition for Remission or Mitigation of forfeiture will no longer be accepted; a Petition for Restoration of Proceeds of Sale for the value of property placed in official use must thereafter be filed. Such Petition shall be filed within ninety days of the sale of the property, or within ninety days of the date the property is placed in official use.

(5) Upon receipt of a Petition for Remission or Mitigation, or a Petition for Restoration of Proceeds of Sale, an investigation must be conducted by the Postal Inspection Service to determine the validity of the facts asserted in the Petition. No hearing shall be held. Results of the investigation relating to an administrative forfeiture action must be forwarded in writing to the Assistant Chief Inspector, Criminal Investigations, Headquarters, Postal Inspection Service. Final decisions on such Petitions are made by the Assistant Chief Inspector, Criminal Investigations or his designee, who must promptly notify the Petitioner of the decision. Results of the investigation relating to a judicial forfeiture must be promptly forwarded to the U.S. Attorney responsible for the judicial prosecution (see paragraph (1) of this subsection).

(6) A Request for Reconsideration of the denial of the Petition for Remission or Mitigation in an administrative forfeiture action must be submitted within ten days from receipt of the letter denying the Petition. The request must be addressed to the Chief Postal Inspector and must be based on evidence recently developed or not previously considered. Only one request for reconsideration of the denial of a Petition may be considered.

[52 FR 4497, Feb. 12, 1987; 52 FR 5765, Feb. 26, 1987; 54 FR 47520, Nov. 15, 1989]

§ 233.8 Expedited forfeiture proceedings for property seized for administrative forfeiture involving controlled substances in personal use quantities.

(a) *Definitions.* As used in this section, the following terms have the meanings specified:

(1) *Appraised Value* means the estimated domestic price at the time of seizure at which such or similar property is freely offered for sale.

(2) *Controlled Substance* has the meaning given in 21 U.S.C. 802.

(3) *Legal and Factual Basis of the Seizure* means a statement of the applicable law under which the property is seized, and a written statement of the circumstances of the seizure sufficiently precise to enable an owner or other interested party to identify the date, place, and use or acquisition which makes the property subject to forfeiture.

(4) *Owner* means one having a legal and possessory interest in the property seized for forfeiture. Even though one may hold primary and direct title to the property seized, such person may not have sufficient actual beneficial interest in the property to support a petition as owner if the facts indicate that another person had dominion and control over the property.

(5) *Personal Use Quantities* means possession of a controlled substance in circumstances where there is not other evidence of an intent to distribute, or to facilitate the manufacturing, com-

pounding, processing, delivering, importing, or exporting of any controlled substance. Evidence of personal use quantities does not include sweepings or other evidence of possession of quantities of a controlled substance for other than personal use.

(i) Such other evidence includes:

(A) Evidence, such as drug scales, drug distribution paraphernalia, drug records, drug packaging material, method of drug packaging, drug "cutting" agents and other equipment, that indicates an intent to process, package or distribute a controlled substance;

(B) Information from reliable sources indicating possession of a controlled substance with intent to distribute;

(C) The arrest and/or conviction record of the person or persons in actual or constructive possession of the controlled substance for offenses under Federal, State or local law that indicates an intent to distribute a controlled substance;

(D) Relationship of the controlled substance to large amounts of cash or any amount of prerecorded government funds;

(E) Possession of the controlled substance under circumstances that indicate the substance is a sample intended for distribution in anticipation of a transaction involving large quantities, or is part of a larger delivery; or

(F) Statements by the possessor, or otherwise attributable to the possessor, including statements of conspirators, that indicate possession with intent to distribute.

(ii) Possession of a controlled substance is presumed to be for personal use when there are no indicia of illicit drug trafficking or distribution such as, but not limited to, the factors listed in § 233.8(a)(5)(i), and the amounts do not exceed the following quantities:

(A) One gram of a mixture of substance containing a detectable amount of heroin;

(B) One gram of a mixture or substance containing a detectable amount of:

(*1*) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivations of ecgonine or their salts have been removed;

(*2*) Cocaine, its salts, optical and geometric isomers, and salts of isomers;

(*3*) Ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

(*4*) Any compound, mixture or preparation which contains any quantity of any of the substances referred to in § 233.8(a)(5) (ii)(B)(*1*)–(*3*);

(*5*) $\frac{1}{10}$th gram of a mixture or substance described in § 233.8(a)(5)(ii) which contains cocaine base;

(*6*) $\frac{1}{10}$ gram of a mixture or substance containing a detectable amount of phencyclidine (PCP);

(*7*) 500 micrograms of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);

(*8*) One ounce of a mixture of substance containing a detectable amount of marihuana;

(*9*) One gram of methamphetamine its salts, isomers, and salts of its isomers, or one gram of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomer.

(iii) The possession of a narcotic, depressant, a stimulant, a hallucinogen or cannabis-controlled substanc will be considered in excess of persona use quantities if the dosage uni amount possessed provides the sam or greater equivalent efficacy as described in § 233.8(a)(5)(ii).

(6) *Property* means property subjec to forfeiture under Title 21, U.S.C Sections 881(a)(4), (6), and (7).

(7) *Statutory Rights or Defenses* *the Forfeiture* means all legal and equ table rights and remedies available a claimant of property seized for fo feiture.

(8) *Sworn to* as used § 233.8(b)(4)(ii) refers to the oath provided by 28 U.S.C. 1746.

(b) *Petition for expedited release* *an administrative forfeiture actio* (1) Where property is seized for a ministrative forfeiture involving co trolled substances in personal u quantities, the owner may petition th Postal Inspection Service for expedi ed release of the property.

(2) The owner filing the petition f expedited release must establish th following:

(i) The owner has a valid, good faith interest in the seized property as owner or otherwise;

(ii) The owner reasonably attempted to ascertain the use of the property in a normal and customary manner; and

(iii) The owner did not know or consent to the illegal use of the property, or in the event that the owner knew or should have known of the illegal use, the owner did what reasonably could be expected to prevent the violation.

(3) In addition to those factors listed in § 233.8(b)(2), if an owner can demonstrate that he has other statutory rights or defenses that would cause him to prevail on the issue of forfeiture, such factors must also be considered in ruling on the petition for expedited release.

(4) A petition for expedited release must be:

(i) Filed in a timely manner to be considered; in order to be filed in a timely manner, the petition must be received by the Postal Inspection Service within 20 days from the date of the first publication of the notice of seizure.

(ii) Executed and sworn to by the owner and both the envelope and the request must be clearly marked "PETITION FOR EXPEDITED RELEASE";

(iii) Filed in accordance with the notice of seizure; and

(iv) Addressed to the Chief Postal Inspector, Postal Inspection Service.

(5) The petition must include the following:

(i) A complete description of the property, including identification numbers, if any, and the date and place of seizure;

(ii) The petitioner's interest in the property, which must be supported by title documentation, bills of sale, contracts, mortgages, or other satisfactory documentary evidence; and

(iii) A statement of the facts and circumstances, to be established by satisfactory proof, relied upon by the petitioner to justify expedited release of the seized property.

(c) *Ruling on petition for expedited release in an administrative forfeiture action involving personal use quantities of a controlled substance.* (1) Upon receipt of a petition for expedited release filed pursuant to § 233.8(b), the Postal Inspection Service must determine first whether a final administrative determination of the case, without regard to the provisions of this section, can be made within 21 days of the seizure. If such a final administrative determination is made within 21 days, no further action need be taken under this section.

(2) If no such final administrative determination is made within 21 days of the seizure, the following procedure applies:

(i) The Postal Inspection Service, within 20 days after the receipt of the petition for expedited release, determines whether the petition filed by the owner has established the factors listed in § 233.8(b)(2); and

(ii) If the Postal Inspection Service determines that those factors have been established, it terminates the administrative proceedings and returns the property to the owner except where it is evidence of a violation of law; or

(iii) If the Postal Inspection Service determines that those factors have not been established, it proceeds with the administrative forfeiture.

(d) *Posting of substitute res.* (1) Where property is seized for administrative forfeiture involving controlled substances in personal use quantities, the owner may obtain release of the property by posting a substitute res with the Postal Service. The property will be released to the owner upon the payment of an amount equal to the appraised value of the property if it is not evidence of a violation of law or has design or other characteristics that particularly suit it for use in illegal activities. This payment must be in the form of a traveler's check, a money order, a cashier's check or an irrevocable letter of credit made payable to the Postal Service. A bond in the form of a cashier's check will be considered as paid once the check has been accepted for payment by the financial institution which issued the check.

(2) If a substitute res is posted and the property is administratively forfeited, the Postal Inspection Service will forfeit the substitute res in lieu of the property.

[54 FR 47520, Nov. 15, 1989]

§ 233.9 Expedited release of conveyances being forfeited in a judicial forfeiture proceeding for a drug-related offense.

(a) *Petition for expedited release of conveyance.* Where a conveyance has been seized and is being forfeited in a judicial proceeding for a drug-related offense, the owner may petition the United States Attorney for an expedited release of the conveyance in accordance with the regulations of the Department of Justice (21 CFR part 1316).

(b) *Petition filed in timely manner.* A petition for expedited release must be filed in a timely manner in order to be considered by the United States Attorney. To be considered as filed in a timely manner, in accordance with 21 CFR part 1316, the petition must be received by the appropriate United States Attorney within 20 days from the date of the first publication of the notice of the action and arrest of the property, or within 30 days after filing of the claim, whichever occurs later.

(c) *Obtaining release of the property by filing a substitute res bond.* Where a conveyance is being forfeited in a judicial proceeding for a drug-related offense, the owner may obtain release of the property by filing a substitute res bond with the Postal Inspection Service. The conveyance will be released to the owner upon the payment of a bond in the amount of the appraised value of the conveyance if it is not evidence of a violation of law or has design or other characteristics that particularly suit it for use in illegal activities. This bond must be in the form of a traveler's check, a money order, a cashier's check or an irrevocable letter of credit made payable to the United States Postal Service. A bond in the form of a cashier's check will be considered as paid once the check has been accepted for payment by the financial institution which issued the check.

(d) *Forfeiture of the bond.* If a substitute res bond is filed and the conveyance is judicially forfeited, the court will forfeit the bond in lieu of the property.

[54 FR 47522, Nov. 15, 1989]

§ 233.10 Notice provisions.

(a) *Special notice provision.* At the time of seizure of property defined in § 233.8(b) for violations involving the possession of personal use quantities of a controlled substance, written notice will be provided to the possessor of the property regarding applicable statutes and Federal regulations including the procedures established for the filing of a petition for expedited release and for the posting of a substitute res bond.

(b) *Standard notice provision.* The standard notice to the owner as required by 19 U.S.C. 1607 will be made at the earliest practicable opportunity after determining ownership of the seized property and must include the legal and factual basis of the seizure.

[54 FR 47522, Nov. 15, 1989]

PART 235—DEFENSE DEPARTMENT LIAISON

Sec.
235.1 Postal Service to the Armed Forces.
235.2 Civil preparedness.

§ 235.1 Postal Service to the Armed Forces.

(a) Publication 38, Postal Agreement with the Department of Defense, defines the Postal Service's responsibilities for providing postal service to the Armed Forces.

(b) The Chief Inspector is responsible for military liaison.

(c) Postal inspectors provide liaison between postmasters and military commanders, visit military installations as required, and make any necessary recommendations.

(39 U.S.C. 401(2), 402, 403, 404, as enacted by Pub. L. 91-375, 84 Stat. 719)

[38 FR 26193, Sept. 9, 1973]

§ 235.2 Civil preparedness.

(a) *Mission.* The prime objective of postal emergency preparedness planning is to maintain or restore essential postal service in a national emergency, natural disaster, or disruptive domestic crisis.

(b) *Emergency Coordinator.* The Chief Inspector is designated Emergency Coordinator for the Postal Service. As Emergency Coordinator, he provides general direction and coordination of the following programs:

(1) National Civil Preparedness and Defense Mobilization;

(2) Natural Disaster Preparedness;

(3) Emergency Response to Disruptive Domestic Crisis.

(c) *Regional Emergency Coordinator.* The Chief Inspector may delegate authority to Regional Chief Postal Inspectors, or others, for the function of Regional Emergency Coordinator and the general direction and coordination of all such programs within the Postal Regions, as are conducted by him at the National level.

(d) *Postmaster General emergency line of succession.* (1) Deputy Postmaster General; (2) Senior Assistant Postmaster General, Administration; (3) Senior Assistant Postmaster General, Operations.

(e) *Headquarters and field lines of succession.* Each Headquarters organizational unit shall establish its own internal line of succession to provide for continuity under emergency conditions. Each Regional Postmaster General, Regional Chief Inspector, Postal Data Center Director, Inspector in Charge, and postmaster at first-class post offices shall prepare a succession list of officials who will act in his stead in the event he is incapacitated or absent in an emergency. Orders of succession shall be shown by position titles, except those of the Inspection Service may be shown by names.

(f) *Field responsibilities.* Postmasters and heads of other installations shall:

(1) Carry out civil preparedness assignments, programs, etc., as directed by regional officials.

(2) Comply with, and cooperate in community civil preparedness plans (including exercise) for evacuation, take cover and other survival measures prescribed for local populations.

(3) Designate representatives for continuing liaison with local civil preparedness organizations where such activity will not interfere with normal duties.

(4) Endeavor to serve (at their own option) as members on the staff of the local civil preparedness director, provided such service will not interfere with their primary postal responsibility in an emergency.

(5) Authorize and encourage their employees to participate voluntarily in nonpostal pre-emergency training programs and exercises in cooperation with States and localities.

(39 U.S.C. 401(2), 402, 403, 404, as enacted by Pub. L. 91-375, 84 Stat. 719)

[38 FR 26193, Sept. 9, 1973]

Post Office Organization and Administration

PART 241—ESTABLISHMENT AND CLASSIFICATION

Sec.
241.1 Post offices.
241.2 Stations and branches.

§ 241.1 Post offices.

(a) *Establishment.* See § 113.1 of this chapter.

(b) *Classification.* As of July 1 each year, post offices are classified by the Postmaster General based on the allowable postal revenue units for the second preceding fiscal year as follows:

(1) *First Class.* Post offices having 950 or more revenue units.

(2) *Second Class.* Post offices having 190 but less than 950 revenue units.

(3) *Third Class.* Post offices having 36 but less 190 revenue units.

(4) *Fourth Class.* Post offices having less than 36 revenue units.

(39 U.S.C. 401)

[36 FR 4764, Mar. 12, 1971, as amended at 42 FR 59082, Nov. 15, 1977]

§ 241.2 Stations and branches.

(a) *Description.* (1) Stations are established within the corporate limits or boundary, and branches are established outside the corporate limits or boundary of the city, town, or village in which the main post office is located. Stations and branches may be designated by number, letter or name. As a general rule, branches are named.

(2) Stations and branches transact registry and money order business, sell postage supplies, and accept matter for mailing. Delivery service, post office boxes, and other services may be

provided when directed by the postmaster.

(3) Stations and branches, except nonpersonnel rural stations and branches, are designated as independent when registered and other mail is received or dispatched without passing through the main office.

(b) *Classification*—(1) *Classified.* Operated by postal employees in quarters provided by the Federal Government.

(2) *Contract.* Operated under contract by persons who are not Federal Government employees. Persons operating contract stations and branches are independent contractors and neither the contractors nor any person employed by them to assist in the conduct of contract stations or branches shall be employees of the Federal Government for any purpose whatsoever.

(39 U.S.C. 401)

[36 FR 4764, Mar. 12, 1971]

PART 242—CHANGE OF SITE

§ 242.2 Change of site—fourth-class offices.

Report by memorandum to chief, organization and management branch, when change in site is necessary. Complete Form 1021 when furnished. Retain one copy in files. If new location is one-fourth of a mile or more from existing location, furnish a statement signed by majority of customers approving change. When a change involves moving a post office from one county to another, notify the Deputy Postmaster General, of the circumstances (including a sketch showing present and proposed sites), and await approval of that Division.

(39 U.S.C. 401)

[36 FR 4765, Mar. 12, 1971]

PART 243—CONDUCT OF OFFICES

§ 243.2 Quarters.

(a) *Employee bulletin boards.* Bulletin boards may be placed in workrooms and employees' lunchrooms for displaying notices as prescribed in this manual and Management Labor Organization Agreements.

(b) *Location of offices.* Postal units may not be located in, or directly connected to, a room in which intoxicating liquor is sold to be consumed on the premises.

(c) *Lost articles.* When articles are turned in to employees, the name and address of the finder shall be recorded so the article may be returned to him if not claimed by the loser. If the name of the finder cannot be obtained, and the article is not claimed within 30 days, it must be disposed of in the same manner as unidentified material found loose in the mail. Do not return postal money orders to the finder. Mail to Money Order Branch, Accounting Division, U.S. Postal Service, General Accounting Office Building, Washington, DC 20260, with a memorandum of explanation.

(d) *Public use of restrooms.* Restrooms off public corridors shall normally be kept open during regular hours of business for the benefit of the public. Where vandalism or loitering cannot be controlled, postmasters may lock restrooms, furnishing those agencies served by the restrooms, keys for employee use. This shall not be construed to permit access by nonpostal personnel to restrooms in restricted postal areas.

(e) *Letter drops.* At all except fourth-class post offices, provide a regulation letterbox for depositing mail in front of or next to the post office. Show collection time schedules on letterboxes. At fourth-class offices, if a letterbox is not supplied, provide a slot in the outer post office door. When messengers or star route carriers have access to lobbies, door slot deposits must lead to a locked box.

(f) *Hour signs.* Display hours of window service prominently at all first-, second-, and third-class post offices, classified stations and branches, and annexes. Use Sign 41, Hours decal set, available in supply centers.

(g) *Service of process on postal premises.* Postmasters or other installation heads shall permit service on postal premises of civil and criminal process affecting employees in personal matters, when such service of process will not interfere with postal operations. Process servers should be directed to the postmaster's or installation head's office, where the employee will be called in and service made. Section 265.10 of this chapter contains rules regarding compliance with subpoena duces tecum, court orders, and summonses where official business or official records are involved.

(h) *Public service areas—prohibited items.* Photographs of an incumbent or former President or Postmaster General are not to be displayed in post office lobbies or in common use public service areas such as elevator lobbies and corridors in facilities owned by or leased to the Postal Service. Further, such photographs are not to be requisitioned or purchased by postal installations at Postal Service expense.

(39 U.S.C. 501)

[36 FR 4765, Mar. 12, 1971, as amended at 39 FR 38376, Oct. 31, 1974; 40 FR 8820, Mar. 3, 1975; 42 FR 33722, July 1, 1977; 44 FR 39854, July 6, 1979]

General Postal Administration

PART 255—ACCESS OF HANDICAPPED PERSONS TO POSTAL SERVICES, PROGRAMS, FACILITIES, AND EMPLOYMENT

Sec.

255.1 Discrimination against handicapped persons prohibited.
255.2 Special arrangements for postal services.
255.3 Access to postal facilities.
255.4 Other postal regulations; authority of postal officials and employees.

AUTHORITY: 39 U.S.C. 101, 401, 403, 1001, 1003, 3403, 3404; 29 U.S.C. 791, 794.

SOURCE: 50 FR 14102, Apr. 10, 1985, unless otherwise noted.

§ 255.1 Discrimination against handicapped persons prohibited.

(a) *Policy.* Postal Service policy is to comply fully with sections 501 and 504 of the Rehabilitation Act of 1973, and other applicable laws. Accordingly, no otherwise qualified handicapped individual shall, solely by reason of his or her handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity operated by the Postal Service, or in employment.

(b) *Definition.* For purposes of paragraph (a) of this section, the term "handicapped" applies to a person who has, has a record of, or is regarded as having, a physical or mental impairment which substantially limits one or more of such person's major life activities.

(c) *Customer Service Complaints.*—(1) *How made.* Complaints by or on behalf of otherwise qualified handicapped customers who believe that they have been discriminated against in the provision of postal services solely by reason of their handicap may be made in accordance with Domestic Mail Manual 114.1. The customer should provide, or be willing to provide upon request, sufficient information regarding the matter to permit a complete examination of all of the relevant circumstances concerning the complaint.

(2) *Exhaustion of Administrative Remedies.* See Domestic Mail Manual 114.14.

(3) *Resolution.* A local official receiving a complaint of unlawful discrimination against a handicapped person, such as a refusal to serve an otherwise qualified customer solely because of the customer's handicap, must handle it in accordance with existing regulations and procedures for resolution of customer complaints, including the time limits prescribed in or under § 255.1(c)(4). The steps taken by the official should include an initial review of the complaint to determine whether further investigation is necessary to resolve the complaint, or whether immediate action can be taken to remedy any illegal discrimination that may be occurring. Such corrective action as is determined to be necessary to resolve the complaint should be taken as soon as possible. The complainant should be notified promptly of the action taken; if the matter cannot be resolved quickly, appropriate interim reports, including an acknowledgment of receipt of the complaint, should be furnished to the complainant. Replies to written complaints must be in writing; replies to nonwritten complaints may be in writing or any other appropriate medium. If a complaint claims that discrimination has resulted from the lack of special arrangements for

handicapped persons, the complaint should be handled in accordance with § 255.2(b) or § 255.3(b), as appropriate. Legal advice on whether a particular complaint seeks to end unlawful discrimination or to request special arrangements may be sought from the Regional Counsel.

(4) *Time Limits.* If a complaint cannot be resolved within fifteen (15) days the customer must be sent a written acknowledgment of the receipt of the complaint. If the complaint cannot be resolved within thirty (30) days of its receipt, the customer must be sent an interim report in writing, including a statement of when the matter is expected to be resolved. Whenever it appears that a complaint cannot be resolved within sixty (60) days of its receipt, a written report and explanation must be submitted to the appropriate Regional Office, and to the Consumer Advocate, U.S. Postal Service, Washington, DC 20260-6320. Local managers may prescribe shorter time limits for complaint responses within their area of responsibility by memorandum or other appropriate written directive.

(5) *Automatic Review.* If an associate office postmaster or management sectional center manager proposes to deny a request by a handicapped customer for a special arrangement or the alteration of a facility, the proposed decision shall be submitted to the next higher level of management (if the request is for a special arrangement) or to the appropriate Field Real Estate and Buildings Office (if the request is for the alteration of a facility). The customer shall be notified of the approved decision. No review under this provision limits the customer's right of appeal to the Consumer Advocate under Domestic Mail Manual 114.14.

(6) *Appeal.* See Domestic Mail Manual 114.14.

(d) *Postal Employment.* Discrimination against otherwise qualified handicapped postal employees or job applicants is prohibited, under section 501 of the Rehabilitation Act of 1973, 29 U.S.C. 791, and by implementing regulations promulgated by the Equal Employment Opportunity Commission and the Postal Service. Complaints of discrimination against handicapped applicants or employees may be made in accordance with the procedures prescribed in the Employee and Labor Relations Manual (ELM) concerning Equal Employment Opportunity, which apply to discrimination against handicapped persons.

§ 255.2 Special arrangements for postal services.

(a) *Policy.* The Postal Service offers all of its services to all of its customers without discrimination. Customers who would have difficulty using or be unable to use certain services may be eligible under postal regulations for special arrangements. Some of the special arrangements that the Postal Service has authorized are listed below. No customer is required to use any special arrangement offered by the Postal Service, but a customer's refusal to make use of such special arrangement does not require the Postal Service to offer other special arrangements to that customer.

(1) *Carrier Delivery Services and Programs.* See Domestic Mail Manual 155.262.

(2) *Postal Retail Services and Programs.*—(i) *Stamps by Mail.* See Postal Operations Manual 145.

(ii) *Retail Service from Rural Carriers.* See Domestic Mail Manual 156.41.

(iii) *Self-Service Postal Centers.* Self-Service Postal Centers (SSPCs) contain vending equipment for the sale of stamps and stamp items, and parcel and letter deposit boxes. See Postal Operations Manual 154. Many SSPCs are accessible to individuals in wheelchairs. Customers may obtain information concerning the nearest such SSPC from their local post office.

(iv) *Postage-Free Mailing for Certain Mailings.* See Domestic Mail Manual parts 135 and 115.24, and International Mail Manual 225.

(b) *Inquiries and Requests.*—(1) *How made:* Customers wishing further information about special arrangements for particular postal services may contact the postmaster or other local postal official responsible for such service.

(2) *Response.* A local official receiving a request for special arrangements must provide the customer with any such arrangements as are required by

postal regulations and must notify the customer of the special arrangements. If no such special arrangements are required, the responsible official may take such actions to accommodate the customer as are within his or her authority to provide under postal regulations, if he or she determines that doing so would be reasonable, practical, and consistent with the economical and proper operation of the program or activity for which he or she has budgetary responsibility. Every customer who requests special arrangements shall be notified promptly of the determination made and the reasons therefor. If a determination cannot be made quickly, appropriate interim reports, including an acknowledgment of receipt of the request, must be furnished to the customer. Replies to written requests must be in writing; replies to nonwritten requests may be in writing or any other appropriate medium.

(c) *Exhaustion of Administrative Remedies and Appeal.* See Domestic Mail Manual 114.14.

§ 255.3 Access to postal facilities.

(a) *Policy.*—(1) *Legal and Policy Requirements.* It is Postal Service policy to comply fully with the physical access requirements of the Architectural Barriers Act of 1968, as amended. Pursuant to that Act, the Postal Service designs, constructs, and alters its facilities in accordance with its published standards for access to postal facilities. Such standards are contained in Handbook RE-4, Standards for Facility Accessibility by the Physically Handicapped, single copies of which may be obtained free of charge by writing to the Real Estate and Buildings Department, U.S Postal Service Headquarters, Washington, DC 20260-6400. In general, the Postal Service's access standards apply prospectively to all newly constructed facilities, and to all new alterations of certain features of existing facilities, regardless of whether the facilities are owned or leased, and regardless of whether the alteration is required or discretionary. In addition, the Postal Service remodels facilities for handicapped access whenever such remodeling is legally required under section 501 of the Rehabilitation Act of 1973 as a "reasonable accommodation" to handicapped employees or applicants. Moreover, where handicapped persons are employed or are to be employed, their work areas are required by postal policy to be altered in accordance with Postal Service access standards to make them accessible to the handicapped employees. At every available opportunity, accessible facilities must be selected for lease or purchase, where cost is at an acceptable level, and such facilities provide desirable working conditions, a maximum degree of convenient and efficient postal services, proper access to existing and future air and surface transportation facilities, and control of postal costs (*see* 39 U.S.C. 101(g) and 403(b)(3)). For purposes of the preceding sentence, a facility and its elements are considered "accessible" if they comply with any handicapped access code which has been adopted by any government agency or recommended by the American National Standards Institute, and if any needed off-street parking is provided.

(2) *Discretionary Modifications.* The Postal Service may also modify facilities not legally required to conform to the Barriers Act's standards when it determines that doing so would be consistent with efficient postal operations. Not all facilities are required to conform to the standards adopted under the Act. In determining whether modifications not legally required should be made, due regard is given to:

(i) The cost of the discretionary modification;

(ii) The number of customers to be benefited by the modification;

(iii) The inconvenience, if any, to the general public;

(iv) The anticipated useful life of the modification to the Postal Service;

(v) If the facility is leased, whether the lease would require the Postal Service to restore the premises to their original condition at the expiration of the lease, and, if so, the possible cost of such restoration;

(vi) The historic or architectural significance of the property in accordance with paragraph (a)(4) of this section;

(vii) The availability of other options to foster service accessibility; and

(viii) Any other factor that may be relevant and appropriate to the decision.

(3) *Handicapped Parking.* Handicapped parking restrictions must be rigorously enforced by the installation's Security Control Officer. Where members of the U.S. Postal Security Force are not available to exercise the powers of special policemen under 40 U.S.C. 318, local postmasters and installation heads must, pursuant to 40 U.S.C. 318b and with the approval of the chief postal inspector or his designee, seek the assistance of state and local enforcement agencies to insure that these restrictions are enforced. See 39 CFR 232.1(q).

(4) *Historic Preservation.* Postal Service policy is to comply with the requirements of the National Historic Preservation Act of 1966, Executive Order 11593, and the procedures prescribed by the Advisory Council on Historic Preservation in 36 CFR Part 800 (1984) as they pertain to the modification of historic and architecturally significant properties.

(5) *Blind Vendor Facilities.* See Employee & Labor Relations Manual 614 (Issue 6, 5-20-81).

(b) *Inquiries and Requests.*—(1) *How made.* Inquiries concerning access to postal facilities, and requests for discretionary alterations of postal facilities not covered by the access standards, may be made to the local postmaster or to the manager of the facility involved.

(2) *Response.* The official contacted, if authorized to do so, must determine, in consultation with appropriate supervisors, whether the facility is required to be modified to conform to access standards, and if it is not, whether discretionary alterations should be made. If the facility is required to be modified, arrangements for the required alterations must be made as soon as practicable. If modifications are not required, discretionary alterations may be made, on a case-by-case basis, in accordance with the criteria listed in paragraph (a)(2) of this section. Every customer who requests modifications must be notified promptly of the determination made and the reasons therefor. If a determination cannot be made quickly, appropriate interim reports, including an acknowledgement of the request, must be furnished to the customer. Replies to written requests must be in writing; replies to nonwritten requests must be in writing or any other appropriate medium.

(c) *Exhaustion of Administrative Remedies and Appeal.* See Domestic Mail Manual 114.14.

§ 255.4 Other postal regulations; authority of postal officials and employees.

This Part 255 supplements all other postal regulations. Nothing in this part is intended either to repeal, modify, or amend any other postal regulation, to authorize any postal official or employee to violate or exceed any regulatory limit, or to confer any budgetary authority on any postal official or employee outside normal budgetary procedures. Officials or employees receiving complaints which they lack authority to resolve must promptly refer any such complaint to a higher-level or more appropriate official or employee, and at the same time must notify the customer of the name of the person who is handling the complaint.

PART 259—SERVICES PERFORMED FOR OTHER AGENCIES

Sec.
259.1 Government.
259.2 Red Cross.

§ 259.1 Government.

(a) *Policy.* The Postal Service cooperates with Federal Agencies whenever the overall costs to Government will be reduced. Assistance in a number of special projects and programs is provided when the knowledge and abilities of postal employees are helpful.

(b) *Reimbursement.* The Postal Service establishes reasonable fees and charges for nonpostal services performed for agencies of the Federal as well as State governments. In establishing such fees and charges, the Postal Service considers the value of time of the personnel directly involved in the performance of the service, including direct supervision and supporting functions, plus the cost of materials and supplies specifically sold, used or consumed. Also included is an element representing a reasonable share of Postal Service general overhead costs which are not attributable or assignable specifically to any product or service. The establishment of such fees and charges shall be reasonably consistent with the methods employed in establishing rates and fees for postal services then in effect.

(c) Except as provided in paragraph (d) of this section, arrangements for Postal Service participation in special surveys, censuses, and other activities must be made between the national headquarters of the requesting agencies and the Customer Services Department, U.S. Postal Service, Washington, DC 20260. Refer all requests to the Regional Postmaster General for forwarding to Headquarters. Authority to perform services for Government agencies is announced in the Postal Bulletin or by individual letters to the offices involved.

(d) *Housing Vacancy Surveys.* (1) General. An interagency agreement between the U.S. Postal Service (USPS) and the Federal Home Loan Bank Board (FHLBB) establishes the terms and conditions and reimbursement rates under which USPS will conduct Housing Vacancy Surveys in City Delivery offices when requested by FHLBB.

(2) Restrictions. The Agreement only authorizes the disclosure of aggregate statistical data. Postal managers must not permit the name or address of any past or present postal patron, or any other person to be disclosed unless such disclosure is authorized in writing by USPS Regions or Headquarters and is not in violation of 39 U.S.C. 412.

(3) Postmaster's Responsibility. (i) A postmaster will receive notification from FHLBB when his office has been selected to conduct a Housing Vacancy Survey. Normally, written notification will be mailed to the postmaster 30 days in advance of the date FHLBB would like USPS to conduct the survey, since USPS is under no obligation to use overtime or auxiliary assistance to conduct these surveys. The postmaster or his designee will schedule the survey on or near the date requested and will promptly reply to FHLBB so that the necessary forms will be provided on time.

(ii) All necessary forms and instructions will be supplied directly to each post office to be surveyed. Postmasters will designate a manager in each delivery unit to coordinate the survey within the unit and to review completed survey forms for accuracy.

(iii) FHLBB may request USPS to perform special or emergency surveys with less than 30 days advance notice. Since FHLBB has agreed to reimburse USPS at twice the normal rates for promptly performing such surveys, every reasonable effort should be made to accommodate such requests in a timely manner.

(iv) Housing Vacancy Surveys will not be conducted during the month of December of any year.

(v) Postmasters will notify the Office of Delivery and Collection, Washington, DC 20260, of the number of each type survey form completed for FHLBB. FHLBB will then remit payment directly to Headquarters, USPS.

(vi) USPS will not release or publish any survey results except in response to a court order, subpoena, or as required by the Freedom of Information Act.

(e) *Unauthorized projects prohibited.* Do not conduct special surveys or otherwise participate in any cooperative projects without the authorization in paragraph (c) of this section.

(39 U.S.C. 401, 411)

[36 FR 4773, Mar. 12, 1971, as amended at 40 FR 26511, June 24, 1975; 41 FR 56196, Dec. 27, 1976; 42 FR 58170, Nov. 8, 1977; 42 FR 63170, Dec. 15, 1977]

§ 259.2 Red Cross.

(a) *General.* The Postal Service and the Red Cross cooperate to maintain communication between the individual and the community during times of disaster. This applies only to natural disasters such as those caused by floods, tornados, hurricanes, earthquakes, fires, explosions, etc., and not to those caused by enemy action.

(b) *Role of Postal Service.* The Postal Service and the Red Cross will share information on the whereabouts of persons displaced by disasters, and otherwise cooperate with each other, as follows:

(1) The Red Cross will use Form 3575, Change of Address Order, as a standard item in Red Cross disaster relief. It will urge disaster victims displaced from their homes to obtain and complete the forms, it will distribute the forms to disaster victims who need them, and it will collect from the victims and turn over to the Postal Service any completed forms received.

(2) The Postal Service will provide the Red Cross the blank forms needed.

(3) During each disaster and subsequent disaster relief efforts, the Postal Service will establish a separate file of change of address forms completed by disaster victims, and will make available to the Red Cross information in the file. This information will be used by the Red Cross only to locate individuals and families, to answer inquiries from relatives and friends concerning the whereabouts and welfare of the disaster victims, or to make contact with disaster victims who have applied for assistance from the Red Cross but who cannot be located because of a change of address.

(4) The Postal Service and the Red Cross will encourage appropriate local postal officials and Red Cross chapters to maintain contact with each other and to participate in local and community planning for disasters.

(5) When appropriate, the Postal Service and the Red Cross will meet and exchange information at the national headquarters level concerning the effectiveness of their joint efforts for disaster relief.

(6) Regional Postmasters General and Postal Inspectors in Charge are responsible for seeing that post offices implement these cooperative arrangements in disaster situations.

(7) The instructions in § 259.2 serve as a broad framework within which field officials of both agencies may coordinate their facilities and resources. However, postal officials shall cooperate with Red Cross officials to the maximum feasible degree during times of natural disasters.

(39 U.S.C. 401, 411)

[36 FR 4773, Mar. 12, 1971, as amended
40 FR 26511, June 24, 1975]

Records and Information

PART 261—RECORDS AND INFORMATION MANAGEMENT

Sec.

261.1 Purpose and scope.
261.2 Authority.
261.3 Policy.
261.4 Responsibility.

AUTHORITY: 39 U.S.C. 401.

§ 261.1 Purpose and scope.

As a result of the Postal Reorganiza
tion Act, 39 U.S.C. 410, the U.S. Posta
Service is no longer subject to the pr
visions of the Federal Records Act
1950, or any of its supporting regul
tions which provide for the conduct
records management in Federal age
cies. The objective of Parts 2
through 268 is to provide the basis f
a Postal Service-wide records and i
formation management program
fecting all organizational componen
having the custody of any form of i
formation and records.

[40 FR 45721, Oct. 2, 1975; 40 FR 48511, O
16, 1975]

§ 261.2 Authority.

(a) 39 U.S.C. 401(5) states that t
Postal Service has the power to
quire property it deems necessary
convenient in the transaction of
business and to hold, maintain, s
lease or otherwise dispose of su
property.

(b) 39 CFR 224.3(b) assigns to t
Postal Service Records Officer, locat
under the Senior Assistant Postmas
General, Finance Group, responsib
ity for the retention security and p
vacy of Postal Service records and t
power to authorize the disclosure
such records and to order their disp
al by destruction or transfer. Includ
is the authority to issue records m
agement policy and to delegate or t
appropriate action if that policy is
adhered to or if questions of interp
tation of procedure arise.

[40 FR 45721, Oct. 2, 1975, as amended at 44 FR 51223, Aug. 31, 1979]

§ 261.3 Policy.

It is the policy of the Postal Service:

(a) To, as appropriate, create, preserve, protect and disclose records which contain adequate and proper documentation of the organization, functions, policies, decisions, operations, procedures, activities and transactions of the Postal Service,

(b) To reduce to an absolute minimum the records holdings of the Postal Service by strict adherence to established records retention schedules.

[40 FR 45721, Oct. 2, 1975, as amended at 44 FR 51223, Aug. 31, 1979]

§ 261.4 Responsibility.

(a) The Records Officer administers the Postal Service Records and Information Management Program through a Headquarters organizational component, Regional Records Control Officers, representatives assigned by each Headquarters department, and contacts in each district, data processing center and other major Postal Service installation.

(b) Postal Service managers are responsible for administering records and information management policies and for complying with all handbooks, directives, and instructions in support of this policy.

[40 FR 45721, Oct. 2, 1975, as amended at 44 FR 51223, Aug. 31, 1979]

PART 262—RECORDS AND INFORMATION MANAGEMENT DEFINITIONS

Sec.
262.1 Purpose and scope.
262.2 Officials.
262.3 Information.
262.4 Records.
262.5 Systems (Privacy).
262.6 Retention and disposal.
262.7 Non-records.

AUTHORITY: 39 U.S.C. 401; 5 U.S.C. 552a.

SOURCE: 49 FR 30693, Aug. 1, 1984, unless otherwise noted.

§ 262.1 Purpose and scope.

This part contains the official definition of those basic records and information management terms that are frequently used throughout Postal Service regulations and directives.

§ 262.2 Officials.

(a) *Records Custodian.* The postmaster or other head of a facility such as a postal data center, mailbag depository, management sectional center, district office, or regional headquarters who *maintains* USPS records. Department heads are the custodians of records maintained at Headquarters. Senior medical personnel are the custodians of restricted medical records maintained within Postal facilities. EAP counselors are the custodians of records pertaining to program participants.

(b) *Records Officer.* The official responsible for the retention, security, and privacy of Postal Service records with the power to authorize the disclosure of such records and to order their disposal by destruction or transfer; included is the authority to issue records management policy and to delegate or take appropriate action if that policy is not adhered to or if questions of interpretation or procedure arise.

(c) *Information System Executive.* The Postal Service official who prescribes the existence of and the policies for an information system; usually this is an Assistant Postmaster General.

[49 FR 30693, Aug. 1, 1984, as amended at 51 FR 26385, July 23, 1986]

§ 262.3 Information.

Data combined with the knowledge of its context and having the potential to serve a Postal Service use.

(a) *Sensitive information.* Information which has been identified by the USPS as *restricted* or *critical.*

(1) *Critical information.* Information that must be available in order that the Postal Service effectively perform its mission and meet legally assigned responsibilities; and for which special precautions are taken to ensure its accuracy, relevance, timeliness and completeness. This information, if lost, would cause significant financial loss, inconvenience or delay in performance of the USPS mission.

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(2) *Restricted information.* Information that has limitations placed upon both its access within the Postal Service and disclosure outside the Postal Service consistent with the Privacy and Freedom of Information Acts.

(i) *Restricted mandatory.* Information that has limitations upon its internal access and that may be disclosed *only* in accordance with an Executive Order, public law, or other Federal statute and their supporting postal regulations.

(ii) *Restricted discretionary.* Information that has limitations upon its internal access and that *may* be withheld from external disclosure solely in accordance with postal regulations, consistent with the Freedom of Information Act.

(b) *Classified information (National Security).* Information about the national defense and foreign relations of the United States that has been determined under Executive Order 12356 to require protection against unauthorized disclosure and has been so designated.

§ 262.4 Records.

Recorded information, regardless of media or physical characteristics, developed or received by the U.S. Postal Service in connection with the transaction of its business and retained in its custody; for machine-readable records, a collection of logically related data treated as a unit.

(a) *Permanent record.* A record determined by the USPS Records Officer or the National Archives and Records Administration as having sufficient historical or other value to warrant continued preservation. (All other records are considered temporary and must be scheduled for disposal.)

(b) *Corporate records.* Those records series that are designated by the Records Officer as containing information of legal, audit, obligatory or archival value about events and transactions of interest to the entire corporate body of the Postal Service. Corporate records are distinguished from operational records, which have value only in their day-to-day use, and from precedential files, which have value only as examples.

(c) *Active record.* A record that contains information used for conducting current business.

(d) *Inactive record.* A record that contains information which is not used for conducting current business, but for which the retention period has not yet expired.

(e) *Vital records.* Certain records which must be available in the event of a national emergency in order to ensure the continuity of Postal Service operations and the preservation of the rights and interests of the Postal Service, its employees, contractors and customers. There are two types of vital records: Emergency Operating Records and Rights and Interests Records.

(1) *Emergency operating records.* Certain vital records necessary to support essential functions of the Postal Service during and immediately following a national emergency.

(2) *Rights and interest records.* Certain vital records maintained to ensure the preservation of the rights and interests of the Postal Service, its employees, contractors and customers.

[49 FR 30693, Aug. 1, 1984, as amended at 51 FR 26385, July 23, 1986]

§ 262.5 Systems (Privacy).

(a) *Privacy Act system of records.* A Postal Service system containing information about individuals, including mailing lists, from which information is retrieved by the name of an individual or by some identifying number or symbol assigned to the individual, such as a Social Security Account Number.

(b) *Individual (record subject).* A living person. Does not include sole proprietorships, partnerships or corporations. A business firm identified by the name of one or more persons is not an individual.

§ 262.6 Retention and disposal.

(a) *Records control schedule.* A directive describing records series that are maintained by components of the Postal Service; it provides maintenance, retention, transfer, and disposal instructions for each series listed and serves as the authority for Postal officials to implement such instructions.

(b) *Disposal (records).* The permanent removal of records or information from Postal Service custody; included are:

(1) Transfer to the National Archives.

(2) Donation to the Smithsonian Institution, local museums or historical societies.

(3) Sale as waste material.

(4) Discarding.

(5) Physical destruction.

(c) *Retention period.* The authorized length of time that a records series must be kept before its disposal, usually stated in terms of months or years, but sometimes expressed as contingent upon the occurrence of an event; usually the retention period refers to the period of time between the creation of a series and its authorized disposal date; however, in some cases it refers to the length of time between the cutoff point and the disposal date.

§ 262.7 Non-records.

(a) *Non-record material.* Includes blank forms and surplus publications, handbooks, circulars, bulletins, announcements, and other directives as well as any material not directly associated with the transaction of Postal Service business.

(b) *Personal papers.* Those materials created or received during an individual's period of employment with the Postal Service which are of a purely private or nonofficial character, or which were neither created nor received in connection with Postal Service business.

PART 263—RECORDS RETENTION AND DISPOSITION

Sec.

263.1 Purpose and scope.
263.2 Policy.
263.3 Responsibility.
263.4 Records retention schedules.
263.5 Records disposal.

AUTHORITY: 39 U.S.C. 401.

SOURCE: 40 FR 45722, Oct. 2, 1975, unless otherwise noted.

§ 263.1 Purpose and scope.

This part contains the policy and general regulations pertaining to the retention and disposition of records and information throughout all organizational levels and components.

§ 263.2 Policy.

It is the policy of the U.S. Postal Service to establish and maintain schedules specifying the retention periods required for all official and duplicate record copies. Furthermore, it is the policy that all duplicate record copies and non-record material will be disposed of as soon as they have served their purpose.

§ 263.3 Responsibility.

(a) *Records Officer.* The Records Officer has the responsibility for providing for the establishment of retention schedules and has the authority to approve them. Furthermore, he has the authority to dispose of Postal Service records by transfer or destruction.

(b) *Custodians.* Custodians are responsible for the retention and prompt disposal of records in their custody and for delegating in writing, persons to perform these duties.

§ 263.4 Records retention schedules.

The following retention schedules will be maintained within the Postal Service:

(a) General schedule.

(b) Headquarters schedule.

(c) Regional schedule.

(d) District schedule.

(e) Inspection service schedule.

(f) Postal data centers schedule.

(g) Automatic data processing centers schedule.

(h) Post Office schedule.

(i) Other facility schedules.

§ 263.5 Records disposal.

All disposals of records containing sensitive information, i.e. transfers to records storage centers, destruction, transfers external to the USPS, and maintenance of accounting records regarding such disposal, must be accomplished in accordance with procedures issued by the Records Officer.

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PART 264—VITAL RECORDS

Sec.
264.1 Purpose and scope.
264.2 Policy.
264.3 Responsibility.
264.4 Vital Records Program.

AUTHORITY: 39 U.S.C. 401.

SOURCE: 44 FR 51224, Aug. 31, 1979, unless otherwise noted.

§ 264.1 Purpose and scope.

Certain records are critical to the continuity of Postal Service operations or to the preservation of the rights and interests of the Postal Service, its employees, contractors or customers. To ensure that these records are available when needed, specific controls are required which affect all organizational components having the custody of records defined as being "vital."

§ 264.2 Policy.

It is the policy of the U.S. Postal Service to ensure the availability of all records considered critical to the continuity of its operations and the preservation of the rights and interests of the Postal Service, its employees, contractors, and customers. Vital records shall be routinely maintained at predesignated off-site locations to ensure their availability when needed by management and operating personnel.

§ 264.3 Responsibility.

(a) *Records Officer.* The Records Officer is responsible for categorizing records as vital. The Records Officer shall establish and maintain the vital records program, insofar as rights and interests records are concerned, and shall ensure compliance with supportive procedures.

(b) *Chief Postal Inspector.* As the Postal Service's Emergency Coordinator, the Chief Postal Inspector (with the assistance of Headquarters and Regional Emergency Coordinating Committees and the advice of the USPS Records Officer) shall establish and maintain a program to ensure that emergency operating records are available at predesignated off-site locations for use during a national emergency.

(c) *Custodians.* Custodians are responsible for following vital records program procedures including the forwarding of vital records to predesignated off-site locations.

§ 264.4 Vital Records Program.

Complete procedures concerning the identification, categorization, processing, protection, and transfer of vital records are provided by the USPS Records Officer or the USPS Emergency Coordinator, as appropriate.

PART 265—RELEASE OF INFORMATION

Sec.
265.1 Purpose and scope.
265.2 Policy.
265.3 Responsibility.
265.4 Inquiries.
265.5 Public reading room.
265.6 Availability of records.
265.7 Procedure for inspection and copying of records.
265.8 Schedule of fees.
265.9 Annual reports.
265.10 Compliance with subpoena duces tecum court orders and summonses.
APPENDIX A—INFORMATION SERVICES PRICE LIST IN EFFECT JANUARY 1, 1987

AUTHORITY: 39 U.S.C. 401; 5 U.S.C. 552.

§ 265.1 Purpose and scope.

(a) This part contains the regulations of the Postal Service relating to the availability to the public of Postal Service records. Included in this part are the regulations which implement section 552 of Title 5, U.S.C., the "Freedom of Information Act," insofar as it applies to the Postal Service.

(b) Official records of the Postal Service made available pursuant to the requirements of the Act shall be furnished to members of the public as prescribed by this part.

[40 FR 7331, Feb. 19, 1975]

§ 265.2 Policy.

(a) It is the policy of the Postal Service to make its official records available to the public to the maximum extent consistent with the public interest. This policy requires a practice of full disclosure subject only to the specific exemptions required or authorized by law.

(b) The exemptions from mandatory disclosure provided by section 552(b) of Title 5, and section 410(c) of Title 39, U.S.C., for various types of records, reflect the fact that under some circumstances the public interest may be better served by leaving the disclosure of particular records to the discretion of the Postal Service than by requiring their disclosure. As to those records the disclosure of which is not prohibited by statute, Executive Order, or regulation, the discretion vested in the Postal Service is exercised after giving consideration to the following: The effect of non-disclosure on the public's right to know about a particular matter; the effect of disclosure on the right of privacy of any affected individuals; the effect of disclosure on the public interest in the economical, efficient, and orderly operation of the nation's mail system; and any other factors that may be relevant under the circumstances.

[40 FR 7331, Feb. 19, 1975, as amended at 45 FR 44270, July 1, 1980]

§ 265.3 Responsibility.

(a) *Custodian.* Official records are in the custody of the postmaster or other head of the facility, such as a postal data center, mail bag depository, sectional center facility, district office or regional headquarters, or of a group or department or headquarters, at which they are maintained. These custodians are responsible for responding in the first instance to requests from members of the public for Postal Service records.

(b) *Records Officer.* The USPS Records Officer is responsible for the overall administration of this part, including the issuance of detailed instructions to custodians.

(c) *General Counsel.* The General Counsel decides timely appeals authorized by this part.

[40 FR 7331, Feb. 19, 1975, as amended at 45 FR 44270, July 1, 1980]

§ 265.4 Inquiries.

Inquiries regarding the availability of Postal Service records should be directed to the appropriate records custodian. If the appropriate custodian is not known, inquiries should be directed to the USPS Records Officer, U.S. Postal Service, Washington, DC 20260-5010, telephone number (202) 268-2924.

[45 FR 44270, July 1, 1980, as amended at 51 FR 26386, July 23, 1986]

§ 265.5 Public reading room.

The Library of the Postal Service Headquarters, 475 L'Enfant Plaza West, SW., Washington, DC 20260-1641, serves as public reading room for the materials which are listed in paragraphs (a) (2) and (3) of § 265.6 as available for public inspection and copying.

[40 FR 7331, Feb. 19, 1975, as amended at 45 FR 44270, July 1, 1980; 51 FR 26386, July 23, 1986]

§ 265.6 Availability of records.

(a) *Records available to the public upon request*—(1) *General.* Postal Service records are available for inspection or copying at the request of any person, in accordance with the provisions of this part, except as otherwise provided by law or regulations, including but not limited to, § 265.6(b) through (g). Certain categories of records of particular interest are available on a continuing basis as provided in paragraphs (a) (2) and (3) of this section and are listed in a public index as provided in paragraph (a)(4) of this section. Access to other records may be requested on an individual basis in accordance with the procedures provided in § 265.7. Official records which are maintained on an electronic storage medium will normally be made available, in accordance with this part, as an exact duplicate of the requested original in a form readable by the human eye, such as a computer printout.

(2) *Opinions.* All final opinions and orders made in the adjudication of cases by the Judicial Officer, Administrative Law Judges, and Board of Contract Appeals, all final determinations pursuant to section 113.263 of the Domestic Mail Manual, to close or consolidate a post office, or to disapprove a proposed closing or consolidation, and all advisory opinions concerning the private express statutes issued pursuant to § 310.6 of Title 39, CFR, all bid

protest decisions and all decisions on appeals pursuant to this part, rendered by the Law Department are on file and available for inspection and copying in the Headquarters Library, U.S. Postal Service, 475 L'Enfant Plaza West, SW., Washington, DC 20260-1641.

(3) *Administrative Manuals and Instructions to Staff.* The manuals, instructions, and other publications of the Postal Service that affect members of the public are available through the Headquarters Library, U.S. Postal Service, Washington, DC 20260, and at many post offices and other postal facilities. Those which are available to the public but are not listed for sale may be inspected in the Library or at any postal facility which maintains a copy. Copies of publications which are not listed as for sale or as available free of charge may be obtained by paying a fee in accordance with § 265.8.

(4) *Public index.* (i) A public index is maintained in the Headquarters Library of all final opinions and orders made by the Postal Service in the adjudication of cases, Postal Service policy statements which may be relied on as precedents in the disposition of cases, administrative staff manuals and instructions that affect the public, and other materials which the Postal Service elects to index and make available to the public upon request in the manner set forth in paragraph (a) of this section.

(ii) The index contains references to matters issued after July 4, 1967 and may reference matters issued prior to that date.

(iii) Any person may arrange for the inspection of any matter in the public index in accordance with the procedures of § 265.7.

(iv) Copies of the public index and of matters listed in the public index may be purchased through the Headquarters Library upon payment of fees as listed in the index or as provided in § 265.8.

(5) *Listings of Employees' Names.* Upon written request, the Postal Service will, to the extent required by law, provide a listing of postal employees working at a particular postal facility.

(b) *Records not subject to mandato public disclosure.* Certain classes o records are exempt from mandator disclosure under exemptions contai in the Freedom of Information A and in section 410(c) of Title 39, U.S.C The Postal Service will exercise its d cretion, in accordance with the poli stated in § 265.2, as implemented b instructions issued by the Records O ficer with the approval of the Gene Counsel in determining whether t public interest is served by the inspe tion or copying of records that are:

(1) Related solely to the inte personnel rules and practices of t Postal Service.

(2) Trade secrets, or privileged o confidential commercial or finan information, obtained from a person.

(3) Information of a commerc nature, including trade secrets, whe er or not obtained from a person o side the Postal Service, which und good business practice would not b publicly disclosed. This class includ but is not limited to:

(i) Information pertaining to met ods of handling valuable registe mail.

(ii) Records of money orders, exc as provided in 940 of the *Domes Mail Manual (DMM)*.

(iii) Technical information concer ing postage meters and prototyp submitted for Postal Service appro prior to leasing to mailers.

(iv) Reports of market surveys co ducted by or under contract in beh of the Postal Service.

(v) Records indicating rural carr lines of travel.

(vi) Records compiled within t Postal Service which would be of p tential benefit to persons or firms i economic competition with the Pos Service.

(vii) Information which, if public disclosed, could materially increa procurement costs.

(viii) Information which, if public disclosed, could compromise testing o examination materials.

(4) Interagency or internal mem randa or letters that would not b available by law to a private party i litigation with the Postal Service.

(5) Reports and memoranda of consultants or independent contractors, except to the extent they would be required to be disclosed if prepared within the Postal Service.

(6) Files personal in nature, including medical and personnel files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(7) Information prepared for use in connection with proceedings under Chapter 36 of Title 39, U.S.C., relating to rate, classification, and service changes.

(8) Information prepared for use in connection with the negotiation of collective bargaining agreements under Chapter 12 of Title 39, U.S.C., or minutes of, or notes kept during, negotiating sessions conducted under such chapter.

(9) Other matter specifically exempted from disclosure by statute.

(c) *Records or information compiled for law enforcement purposes.* (1) Investigatory files compiled for law enforcement purposes, whether or not considered closed, are exempt by statute from mandatory disclosure except to the extent otherwise available by law to a party other than the Postal Service, 39 U.S.C. 410(c)(6). As a matter of policy, however, the Postal Service will normally make records or information compiled for law enforcement purposes available upon request unless the production of these records:

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority (such as the Postal Inspection Service) in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual.

(2) Whenever a request is made which involves access to records described in § 265.6(c)(1)(i), and

(i) The investigation or proceeding involves a possible violation of criminal law; and

(ii) There is reason to believe that,

(A) The subject of the investigation or proceeding is not aware of its pendency, and

(B) Disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, the Postal Service may, during only such time as that circumstance continues, treat the records as not subject to the requirements of the Freedom of Information Act.

(3) Whenever informant records maintained by a criminal law enforcement agency (such as the Postal Inspection Service) under an informant's name or personal identifier are requested by a third party according to the informant's name or personal identifier, the records may be treated as not subject to the requirements of the Freedom of Information Act unless the informant's status as an informant has been officially confirmed.

(4) Authority to disclose records or information compiled for law enforcement purposes to persons outside the Postal Service must be obtained from the Chief Postal Inspector, U.S. Postal Serivce, Washington, DC 20260-2100, or designee.

(d) *Disclosure of Names and Addresses of Customers.* Upon request, the addresses of specifically identified postal customers will be made available only as follows:

(1) *Permanent change of address.* The new address of any specific customer who has filed a permanent Change of Address Order (PS Form 3575 or handwritten order) will be fur-

nished to any person upon payment of the prescribed fee. See paragraphs (e)(3) and (g)(5) of § 265.8. Disclosure will be limited to the address of the specifically identified individual about whom the information is requested (*i.e.*, not other individuals or family members whose names may also appear on the change of address order). Other information on Form 3575 or copies of the form will not be furnished except in those circumstances stated at paragraphs (d)(6)(i), (d)(6)(iii), or (d)(6)(iv) of this section. The fee is waived for providing information under the circumstances at paragraph (d)(6) of this section. See paragraph (g)(5) of § 265.8.

(2) *Temporary change of address.* Address Information from temporary change of address orders will be furnished only in those circumstances stated at paragraphs (d)(6)(i) through (d)((6)(iv) of this section. Other information on the temporary change of address form or copies of the form will be furnished only in those circumstances stated at paragraphs (d)(6)(i), (d)(6)(iii), or (d)(6)(iv) of this section. The fee is waived for providing information under the circumstances at paragraph (d)(6) of this section. See paragraph (g)(5) of § 265.8.

(3) *Name and address of permit holder.* The name and address of the holder of a particular bulk mail permit, permit imprint or similar permit, or postage meter permit, and the name of any person applying for a permit in behalf of a holder, will be furnished to any person upon the payment of any fees authorized by paragraph (b) of § 265.8. (Lists of permit holders may not be disclosed to members of the public. See paragraph (e)(1) of this section.)

(4) *Post office box address.* The recorded post office box address of a customer whose mail is redirected to a post office box will be furnished in accordance with paragraph (d)(1) of this section upon payment of the prescribed fee. The fee is waived for providing information under the circumstances at paragraph (d)(6) of this section. See paragraph (g)(5)of § 265.8.

(5) *Post office boxholder information.* Information *from* Form 1093, *Application for Post Office Box or Caller Number*, will be provided only as follows:

(i) *Business use*—The recorded name, address, and telephone number of the holder of a post office box being used for the purpose of doing or soliciting business with the public, and any person applying for a box in behalf of a holder, will be furnished to any person without charge. The postmaster may furnish this information from Form 1093 when he is satisfied from the entries appearing on it, or from evidence furnished by the requester (such as an advertising circular), that the box is being used for such a business purpose. When the postmaster is unable to determine whether a business use is involved, he shall refer the request to Regional Counsel for advice.

(ii) *Non-business use*—Information from Form 1093 about the holder of a post office box which is not being used for the purpose of doing or soliciting business with the public will not be furnished except in those circumstances stated at paragraphs (d)(6)(i) through (d)(6)(iv) of this section.

(iii) *Copies of Form 1093*—Copies of Form 1093 will not be furnished except in those circumstances stated at paragraphs (d)(6)(i), (d)(6)(iii), or (d)(6)(iv) of this section.

(6) *Exceptions.* Except as otherwise provided in these regulations, names or addresses of postal customers will be furnished only as follows:

(i) To a federal, state or local government agency upon prior written certification that the information is required for the performance of its duties.

(ii) To a person empowered by law to serve legal process, or the attorney for a party in whose behalf service will be made, or a party who is acting *pro se*, upon receipt of written information that specifically includes all of the following: (A) A certification that the name or address is needed and will be used solely for service of legal process in connection with actual or prospective litigation; (B) a citation to the statute or regulation which empowers the requester to serve process, if the requester is other than the attorney for a party in whose behalf service will be made, or a party who is acting pro *se*; (C) the names of all known parties to the litigation; (D) the court in which the case has been or will be commenced; (E) the docket or other identifying number, if one has been issued; (F) the capacity in which the boxholder is to be served, *e.g.*, defendant or witness; and (G) a brief description of the nature of the litigation, *e.g.*, domestic relations, personal injury, property damage, indebtedness. By submitting such information, the requester certifies that it is true.

The Postal Service suggests use of the standard format appearing at the end of this section when requesting boxholder information under this paragraph. If the request lacks any of the required information or a proper signature, the postmaster will return it to the requester specifying the deficiency.

NOTE.—The term *pro se* means that a party is not represented by an attorney, but is representing himself.

(iii) In compliance with a subpoena or other court order.

(iv) To a law enforcement agency, for oral requests made through the Inspection Service, but only after the Inspection Service has confirmed that the information is needed in the course of a criminal investigation. (All other requests from law enforcement agencies should be submitted in writing to the postmaster as in paragraph (d)(6)(i) of this section.)

(7) *Jury service.* The mailing address of any customer sought in connection with jury service, if known, will be furnished without charge upon prior written request to a court official, such as a judge, court clerk or jury commissioner.

(8) *Address verification.* The address of a postal customer will be verified at the request of a Federal, State, or local government agency upon written certification that the information is required for the performance of the agency's duties. "Verification" means advising such an agency whether or not its address for a postal customer is one at which mail for that customer is currently being delivered. "Verification" neither means nor implies knowledge on the part of the Postal Service as to the actual residence of the customer or as to the actual receipt by the customer of mail delivered to that address. The Postal Service requires government agencies to use the format appearing at the end of this section when requesting the verification of a customer's current address or a customer's new mailing address. If the request lacks any of the required information or a proper signature, or if the request has been sent to the wrong post office, the postmaster will return the request to the agency, specifying the deficiency in the space marked "OTHER".

(9) *Business/Residence location.* If the location of a residence or a place of business is known to a Postal Service employee, whether as a result of official duties or otherwise, the employee may, but need not, disclose the location or give directions to it. No fee is charged for such information.

(10) *Form 1583, Application for Delivery of Mail Through Agent.* Information contained in Form 1583 will not be made available to the public.

(e) *Information not available for public disclosure.* (1) Except as provided by paragraph (a)(5) of this section, the Postal Service and its officers and employees shall not make available to the public by any means or for any purpose any mailing list or other list of names or addresses (past or present) of postal patrons or other persons.

(2) Records or other documents which are classified or otherwise specifically authorized by Executive Order 12356 and implementing regulations to be kept secret in the interest of the national defense or foreign policy are not subject to disclosure pursuant to this part.

(3) Records consisting of trade secrets or confidential financial data, the disclosure of which is prohibited by section 1905 of Title 18, U.S.C., are not subject to disclosure pursuant to this part.

(4) Other records, the disclosure of which is prohibited by statute, are not subject to disclosure pursuant to this part.

(f) *Protection of the right of privacy.* If any record required or permitted by this part to be disclosed contains the name of, or other identifying details concerning, any person, including an employee of the Postal Service, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, the name or other identifying details shall be deleted before the record is disclosed and the requester so informed.

(g) *Disclosure in part of otherwise exempt record.* Any reasonably segregable portion of a record shall be provided after deleting the information which is neither subject to mandatory disclosure nor available as a matter of discretion.

(Suggested Format Referenced at Paragraph 265.6(d)(6)(ii)(B))

To: Postmaster

______

______

Date: ______

REQUEST FOR BOXHOLDER INFORMATION

Please furnish the name and/or street address of the following boxholder:

Name (if known) ______
P.O. Box ______
City, State, ZIP Code ______

The following information is provided in accordance with 39 CFR 265.6(d)(6)(ii):

1. Capacity of requester (e.g., process server, attorney, party representing himself):

______

2. Statute or regulation that empowers me to serve process (not required when requester is an attorney or a party representing himself):

______

3. The names of all known parties to the litigation:

______

4. The court in which the case has been or will be heard:

______

5. The docket or other identifying number if one has been issued:

______

6. The capacity in which the boxholder is to be served (e.g., defendant or witness):

______

7. A brief description of the nature of the litigation (e.g., domestic relations, personal injury, property damage, indebtedness):

______

I certify that the above information is true and that the name and/or street address of the boxholder is needed and will be used solely for service of legal process in connection with actual or prospective litigation.

______

Signature

______

Printed Name

______

Address

______

City, State, ZIP Code

______

FOR POST OFFICE USE ONLY

The name and/or street address as recor ed on the boxholder's application (For 1093):

Name ______
Street Address ______
City, State, ZIP Code ______
Postmark ☐

(*Required Format Referenced at Paragra 265.6(d)(8)*)

(AGENCY LETTERHEAD)

To: Postmaster

______

Agency Control No. ______
Date: ______

ADDRESS INFORMATION REQUEST

Please furnish this agency with the address, if available, for the following in vidual or verify whether or not the addre given below is one at which mail for this dividual is currently being delivered. *If th following address is a post office box, plea furnish the street address as recorded on th boxholder's application form.*

Name: ______
Last Known Address: ______

I certify that the address information f this individual is required for the perfor ance of this agency's official duties.

______

(Signature of Agency Official)

______

(Title)

______

FOR POST OFFICE USE ONLY

☐ MAIL IS DELIVERED TO ADDRESS GIVEN	NEW ADDRESS
☐ NOT KNOWN AT ADDRESS GIVEN	______
☐ MOVED, LEFT NO FORWARDING ADDRESS	______

FOR POST OFFICE USE ONLY—Continued

BOXHOLDER'S STREET ADDRESS

[ ] NO SUCH ADDRESS ______________
[ ] OTHER (SPECIFY): ______________

______________ ______________

____

Agency return address	Postmark/Date Stamp

[40 FR 7331, Feb. 19, 1975, as amended at 41 FR 52052, Nov. 26, 1976; 42 FR 59085, Nov. 15, 1977; 45 FR 44270, July 1, 1980; 47 FR 20304, May 12, 1982; 47 FR 21248, May 18, 1982; 48 FR 1969, Jan. 17, 1983; 51 FR 8825, Mar. 14, 1986; 51 FR 26386, July 23, 1986; 52 FR 13668, Apr. 24, 1987; 52 FR 22778, June 16, 1987; 53 FR 49983, Dec. 13, 1988; 54 FR 3558, Jan. 24, 1989]

§ 265.7 Procedure for inspection and copying of records.

(a) *Submission of requests*—(1) *Form and content of request.* To permit expeditious handling and timely response in accordance with the provisions of this part, a request to inspect or to obtain a copy of an identifiable Postal Service record shall be in writing and bear the caption "Freedom of Information Act Request" or otherwise be clearly and prominently identified as a request for records pursuant to the Freedom of Information Act. A request shall be clearly and prominently identified as such on the envelope or other cover. Other requests for information will be considered informal requests and will be handled as expeditiously as practicable but not necessarily within the time limitations set forth in § 265.7(b). An informal request will be granted or denied according to the substantive rules in § 265.6, if found to be a request for a record. A Freedom of Information Act request shall identify the record sought as completely as possible, by name, description, or subject matter, and be sufficient to permit the custodian to locate it with a reasonable amount of effort. The request may state the maximum amount of fees for which the requester is willing to accept liability without prior notice. See paragraph (f)(2) of § 265.8. If no amount is stated, the requester will be deemed willing to accept liability for fees not to exceed $25.

(2) *To whom submitted.* A request shall be submitted to the custodian of the requested record. If the location of the record is not known, inquiry should be directed to the USPS Records Officer, U.S. Postal Service, Washington, DC 20260-5010, telephone (202) 268-2924. If a request is submitted to a facility other than that at which the record is maintained, it shall be promptly transmitted to the appropriate custodian with a copy of the transmittal furnished to the requester. A request which is not initially submitted to the appropriate custodian shall be deemed to have been received by the Postal Service for purposes of computing the time for response is accordance with § 265.7(b) at the time that it is actually received by the appropriate custodian. If a request seeks records maintained at two or more facilities, the custodian shall be deemed to be the next senior common supervisor of the heads of the facilities, e.g., sectional center manager, district manager, Regional Postmaster General. The USPS Records Officer is deemed to be the custodian, for purposes of this part, in all instances in which a request is for a listing of postal employees. See § 265.6(a)(5).

(3) *Reasons for request.* In view of the possibility that some or all of the records may be exempt from mandatory disclosure, the requester may state any reasons why the record should nevertheless be made available to him even if exempt.

(4) *Request for waiver of fees.* The requester may ask that fees or the advance payment of fees be waived in whole or in part. A fee waiver request shall indicate how the information will be used; to whom it will be provided; whether the requester intends to use the information for resale at a fee above actual cost; any personal or commercial benefit that the requester expects as a result of disclosure; in what manner the general public will benefit from disclosure; and information as to the intended user's identity,

qualifications, expertise in the subject area, and ability and intention to disseminate the information to the public. (See § 265.8(g)(3).)

(5) *Categorical requests.* A request for all or substantially all of the records within a specific category will be deemed a reasonable description of those records only if it is possible, without further information, to determine which particular records are sought. See paragraph (b)(3) of this section concerning the providing of additional information.

(6) *Request for records located at numerous facilities.* A request for records which are, or may be, located at all or a substantial number of post offices or other postal facilities will be deemed to be a reasonable description only of such of those records as are maintained at the post office or other facility to which the request is submitted, and of those records maintained at any other post offices or facilities specifically identified in the request. See paragraph (a)(2) of this section concerning the custodian of records of two or more facilities.

(b) *Responsibilities of the custodian.* (1) The custodian of the requested record is the person responsible for determining whether to comply with or to deny the request. A custodian who is not an Officer as defined in § 221.7, however, should not deny a request, until he has obtained the advice of Regional Counsel. If denial of a request appears necessary, the custodian should seek advice as soon as possible after receipt of the request so as to provide adequate time for legal review.

(2) The custodian shall make his determination within ten working days, i.e., exclusive of Saturdays, Sundays, and holidays, of receiving the request, and more rapidly if feasible. The custodian and the requester may, by mutual agreement, preferably in writing, establish a different response period.

(3) If a requested record cannot be located from the information supplied, the requester should be given an opportunity to supply additional information and, if feasible, to confer with the custodian or his representative, in an attempt to provide a reasonable description of the records sought. If additional information is furnished, the request will be deemed to have been received by the custodian when sufficient additional information to identify and locate the record with a reasonable amount of effort has been received.

(4) The ten working day response period allowed above may be extended by the custodian, after consultation with Regional Counsel or with the General Counsel if the custodian is at Headquarters, for a period not to exceed an additional ten working days when, and to the extent, reasonably necessary to permit the proper processing of a particular request, under one or more of the following unusual circumstances:

(i) The request requires a search for and collection of records from a facility other than that processing the request;

(ii) The request requires the search for, and collection and appropriate examination of, a voluminous amount of separate and distinct records; or

(iii) The request requires consultation (A) with another agency having a substantial interest in the determination of whether to comply with the request or (B) among two or more components of the Postal Service having substantial subject matter interest in the determination of whether to comply with the request.

(5) When the custodian finds that the additional time is required, he shall acknowledge the request in writing within the initial ten day response period, state the reason for the delay and indicate the date on which a decision as to disclosure is expected.

(6) If the custodian has been unable to comply with the applicable time limit provisions of this section, in spite of the exercise of due diligence, he shall nonetheless make a determination as promptly as possible. He shall notify the requester of the exceptional circumstances preventing timely compliance and of the date by which it is expected that the determination will be made. A copy of this notification shall be sent to the General Counsel, U.S. Postal Service, Washington, DC 20260-1100.

(7) If a requested record is known to have been destroyed, disposed of, or

otherwise not to exist, the requester shall be so notified.

(c) *Compliance with request upon affirmative determination by custodian.* (1) When a requested record has been identified and is to be disclosed in whole or in part, the custodian shall ensure that the record is made available promptly and shall immediately notify the requester where and when and upon what reasonable conditions, if any, including the payment of fees, the record will be available for inspection or copies will be available. Postal Service records will normally be available for inspection and copying during regular business hours at the postal facilities at which they are maintained. The custodian may, however, designate other reasonable locations and times for inspection and copying of some or all of the records within his custody.

(2) Any fees authorized or required to be paid in advance by § 265.(f)(3) shall be paid by the requester before the record is made available or a copy is furnished unless payment is waived or deferred pursuant to § 265.8(g).

(3) A custodian complying with a request may designate a representative to monitor any inspection or copying.

(d) *Denial of request.* (1) A reply denying a request in whole or in part shall be in writing, signed by the custodian or his designee, and shall include:

(i) A statement of the reason for, or justification of, the denial, e.g., records personal in nature, including, if applicable, a reference to the provision or provisions of § 265.6 authorizing the withholding of the record and a brief explanation of how each provision applies to the records requested;

(ii) The name and title or position of the person responsible for the denial of the request (see paragraph (d)(2) of this section); and

(iii) A statement of the right to appeal and of the appeal procedure within the Postal Service (described in paragraph (e) of this section).

(2) The custodian is ordinarily the person responsible for the denial of the request. If the denial of a particular request has been directed by higher authority, however, the name and title or position of the person directing the denial shall be given in the reply to the requester in place of the custodian as the person responsible for the denial, and a copy of the denial shall be sent to that person.

(e) *Appeal procedure.* (1) If a request to inspect or to copy a record is denied, in whole or in part, if no determination is made within the period prescribed by this section, or if a request for waiver of fees is not granted, the requester may appeal to the General Counsel, U.S. Postal Service, Washington, DC 20260-1100.

(2) The requester shall submit his appeal in writing within 30 days of the date of the denial or of the other action complained of, or within a reasonable time if the appeal is from a failure of the custodian to act. The General Counsel may, in his discretion, consider late appeals.

(3) In the event of the denial of a request or of other action or failure to act on the part of a custodian from which no appeal is taken, the General Counsel may, if he considers that there is doubt as to the correctness of the custodian's action or failure to act, review the action or failure to act as though an appeal pursuant to this section had been taken.

(4) A letter of appeal should include, as applicable:

(i) A copy of the request, of any notification of denial or other action, and of any other related correspondence;

(ii) A statement of the action, or failure to act, from which the appeal is taken;

(iii) A statement of the reasons why the requester believes the action or failure to act is erroneous; and

(iv) A statement of the relief sought.

(f) *Action on appeals.* (1) The decision of the General Counsel or his designee constitutes the final decision of the Postal Service on the right of the requester to inspect or copy a record. The decision will normally be made within twenty working days from the time of the receipt by the General Counsel. The 20 day response period may be extended by the General Counsel or his designee for a period not to exceed an additional ten working days when reasonably necessary to permit the proper consideration of an appeal, under one or more of the unusual circumstances set forth in paragraph (b)(4) of this section. The aggregate number of additional working days utilized pursuant to this paragraph (f)(1) and paragraph (b) of this section, however, may not exceed ten.

(2) The decision on the appeal shall be in writing. If the decision sustains a denial of a record, in whole or in part, it shall state the justification therefor and shall specify any exemption or exemptions relied on and the manner in which they apply to the record withheld, and shall inform the requester of his right to judicial review. An indexed file of decisions on appeals shall be maintained by the Headquarters Library and be made available to the public.

(3) If not prohibited by or under law, the General Counsel or his designee may direct the disclosure of a record even though its disclosure is not required by law or regulation.

[40 FR 7331, Feb. 19, 1975, as amended at 45 FR 44271, July 1, 1980; 47 FR 20304, May 12, 1982; 51 FR 26386, July 23, 1986; 52 FR 13668, Apr. 24, 1987]

§ 265.8 Schedule of fees.

(a) *Policy.* The purpose of this section is to establish fair and equitable fees to permit the furnishing of records to members of the public while recovering the full allowable direct costs incurred by the Postal Service. The Postal Service will use the most efficient and least costly methods available to it when complying with requests for records.

(b) *Standard rates*—(1) *Record retrieval.* Searches may be done manually or by computer using existing programming.

(i) *Manual search.* The fee for each quarter hour spent by clerical personnel in searching for records is $4.40. When a search cannot be performed by clerical personnel and must be performed by professional or managerial personnel, the fee for each quarter hour in searching for records is $5.35.

(ii) *Computer search.* The fee for retrieving data by computer is the actual direct cost of the retrieval, including computer search time, runs and operator salary, as calculated in accordance with the Information Services Price List in effect at the time that the retrieval services are performed. The list is subject to periodic revision. A copy of the list is included within the public index. (See Appendix A.)

(2) *Duplication.* (i) Except where otherwise specifically provided in postal regulations, the fee for duplicating any record or publication is $.1 per page.

(ii) The Postal Service may at its discretion make coin-operated copy machines available at any location or otherwise give the requester the opportunity to make copies of Postal Service records at his own expense. Unless authorized by the Records Officer, however, no off-site copying shall be permitted of records which, if lost, could not be replaced without inconvenience to the Postal Service.

(iii) The Postal Service will normally furnish only one copy of any record. If duplicate copies are furnished at the request of the requester, the per-page fee shall be charged for each copy of each duplicate page without regard to whether the requester is eligible for free copies pursuant to paragraph (or (g) of this section. At his discretion, when it is reasonably necessary because of a lack of adequate copying facilities or other circumstances, the custodian may make the requested records available to the requester for inspection under reasonable conditions and need not furnish a copy thereof.

(3) *Review.* The fee for each quarter hour spent by clerical personnel in reviewing records located in response to a commercial use request is $4.4 When review cannot be performed by clerical personnel and must be performed by professional or managerial personnel, the fee for each quarter hour is $5.35. Only requesters who are seeking documents for commercial use may be charged for review. "Review" is defined in paragraph (h)(4) of this section; "commercial use" is defined in paragraph (h)(5) of this section.

(4) *Micrographics.* Paragraphs (b)(1), (2) and (3) of this section also apply to information stored within micrographic systems.

(c) *Four categories of fees to be charged.* For the purpose of assessing fees under this section, a requester shall be classified into one of four ca egories: commercial use requesters; educational and noncommercial scientific institutions; representatives of the news media; and all other requesters. Requesters in each category must reasonably describe the records sought. Fees shall be charged requesters in each category in accordance with the following.

(1) *Commercial use requesters.* Fees shall be charged to recover the full direct costs of search, review and duplication in accordance with the rates prescribed in paragraphs (b) (1) through (3) of this section, subject only to the general waiver set out in paragraph (g)(1) of this section. The term "commercial use request" is defined in paragraph (h)(5).

(2) *Educational and noncommercial scientific institutions.* Fees shall be charged only for duplication in accordance with paragraph (b)(2) of this section, except that the first 100 pages furnished in response to a particular request shall be furnished without charge. (See also the general waiver provision in paragraph (g)(1) of this section.) To be eligible for the reduction of fees applicable to this category, the requester must show that the request is being made as authorized by and under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly or scientific research. These institutions are defined in paragraphs (h)(6) and (h)(7) of this section, respectively.

(3) *Representatives of the news media.* Fees shall be charged only for duplication in accordance with paragraph (b)(2) of this section, except that the first 100 pages furnished in response to a particular request shall be furnished without charge. (See also the general waiver provision in paragraph (g)(1) of this section.) To be eligible for the reduction of fees applicable to this category, the requester must meet the criteria in paragraph (h)(8) of this section, and the request must not be made for a commercial use.

(4) *All other requesters.* Fees shall be charged for search and duplication in accordance with paragraphs (b) (1) and (2) of this section, except that the first 100 pages of duplication and the first two hours of search time shall be furnished without charge. (See also paragraphs (g)(1) and (g)(2) of this section.)

(d) *Aggregating requests.* When the custodian reasonably believes that a requester is attempting to break a request down into a series of requests in order to evade the assessment of fees, the custodian may aggregate the requests and charge accordingly. The custodian shall not aggregate multiple requests when the requests pertain to unrelated subject matter. Requests made by more than one requester may be aggregated only when the custodian has a concrete basis on which to conclude that the requesters are acting in concert specifically to avoid payment of fees.

(e) *Other costs.*—(1) *Publications.* Publications and other printed materials may, to the extent that they are available in sufficient quantity, be made available at the established price, if any, or at cost to the Postal Service. Fees established for printed materials pursuant to laws, other than the Freedom of Information Act, that specifically provide for the setting of fees for particular types of records are not subject to waiver or reduction under this section.

(2) *Other charges.* When a response to a request requires services or materials other than the common one listed in paragraph (b) of this section, the direct cost of such services or materials to the Postal Service may be charged, but only if the requester has been notified of the nature and estimated amount of such cost before it is incurred.

(3) *Change of address orders.* Although change of address information is not required by the Freedom of Information Act to be made available to the public, the fee for obtaining this information in accordance with paragraph (d)(1) of § 265.6 is included in this section as a matter of convenience. The fee for searching for a change of address order is $1.00. This fee is charged regardless of whether a permanent change of address is found on file. (See paragraph (g)(5) of this section.)

(f) *Advance notice and payment of fees*—(1) *Liability and payment.* The requester is responsible, subject to limitations on liability provided by this section, for the payment of all fees for services resulting from his request, even if responsive records are not located or are determined to be exempt from disclosure. Checks in payment of fees should be made payable to "U.S. Postal Service."

(2) *Advance notice.* To protect members of the public from unwittingly incurring liability for unexpectedly large fees, the custodian shall notify the requester if the estimated cost is expected to exceed $25. When search fees are expected to exceed $25, but it cannot be determined in advance whether any records will be located or made available, the custodian shall notify the requester of the estimated amount and of the responsibility to pay search fees even through records are not located or are determined to be exempt from disclosure. The notification shall be transmitted as soon as possible after physical receipt of the request, giving the best estimate then available. It shall include a brief explanatory statement of the nature and extent of the services upon which the estimate is based and shall offer the requester an opportunity to confer with the custodian or his representative in an attempt to reformulate the request so as to meet his needs at lower cost. The time period for responding to the request shall not run during the interval between the date such notification is transmitted and the date of receipt of the requester's agreement to bear the cost. No notification is required if the request specifically states that whatever cost is involved is acceptable or is acceptable up to a specified amount that covers estimated costs or if payment of all fees in excess of $25 has been waived.

(3) *Advance payment.* Advance payment of fees shall not be required, except: (i) When it is estimated that the fees chargeable under this section are likely to exceed $250. If the requester has a history of prompt payment of FOIA fees, the custodian shall notify the requester of the likely cost and obtain satisfactory assurance of full payment before commencing work on the request. If the requester has no history of payment, the custodian may require an advance payment of an amount up to the full estimated charge before commencing work on the request.

(ii) When a requester has previously failed to pay a fee in a timely fashion (i.e., within 30 days of the date of the billing), the requester shall be required to pay the full amount owed and to make an advance payment of the full amount of the estimated fee before processing will begin on a new or pending request.

(iii) When advance payment is required under paragraphs (f)(3)(i) or (ii) of this section, the time periods for responding to the initial request or to an appeal shall not run during the interval between the date that notice of the requirement is transmitted and the date that the required payment or assurance of payment is received.

(g) *Restrictions on assessing fees*—(1) *General waiver.* Fees shall not be charged to any requester if they would amount, in the aggregate, for a request or a series of related requests, to $10 or less. When the fees for the first 100 pages or the first two hours of search time are excludable under paragraph (c) of this section, additional costs will not be assessed unless they exceed $10. This general waiver does not apply to the fee for providing change of address information.

(2) *Certain fees not charged.*—(i) *All requests except those for commercial use.* Fees shall not be charged for the first 100 pages of duplication and the first two hours of search time except when the request is for a commercial use as defined in paragraph (h)(5) of this section. When search is done by computer, the fees to be excluded for the first two hours of search time shall be determined on the basis of the standard rates set out in the Information Services Price List then in effect. (See Appendix A.) Assessment of search fees will begin at the point when the cost of the search (including the cost of equipment use and operator's time) reaches the equivalent dollar amount of the operator's basic rate for two hours plus a factor to cover benefits.

(ii) *Requests of educational and noncommercial scientific institutions and representatives of the news media*

Fees shall not be charged for time spent searching for records in response to requests submitted by educational and noncommercial scientific institutions or representatives of the news media.

(3) *Public interest waiver.* The custodian shall waive a fee, in whole or in part, and any requirement for advance payment of such a fee, when he determines that furnishing the records is deemed to be in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the federal government, and is not primarily in the commercial interest of the requester. This waiver may be granted notwithstanding the applicability of other fee reductions prescribed by this section for requesters in certain categories. In determining whether disclosure is in the public interest for the purposes of this waiver, the following factors may be considered:

(i) The relation of the records to the operations or activities of the Postal Services;

(ii) The informative value of the information to be disclosed;

(iii) Any contribution to an understanding of the subject by the general public likely to result from disclosure;

(iv) The significance of that contribution to the public understanding of the subject;

(v) The nature of the requester's personal interest, if any, in the disclosure requested; and

(vi) Whether the disclosure would be primarily in the requester's commercial interest.

(4) *Waiver by officer.* Any officer of the Postal Service, as defined in § 221.8, his designee, or the USPS Records Officer may waive in whole or in part any fee required by this part or the requirement for advance payment of any fee.

(5) *Waiver of fee for changes of address.* The fee prescribed by paragraph (e)(3) of this section is waived when change of address information is provided:

(i) To a Federal, state or local government agency upon prior written certification that the information is required for the performance of its duties.

(ii) To persons requesting the information for the purpose of serving legal process in accordance with paragraph (d)(6)(ii) of § 265.6.

(iii) In compliance with a subpoena or other court order.

(iv) To a law enforcement agency, for oral requests made through the Inspection Service in accordance with paragraph (d)(6)(iv) of § 265.6.

(v) To postage meter manufacturers when they are attempting to locate a missing meter.

This waiver does not apply to fees for services performed in accordance with section 945 of the Domestic Mail Manual.

(h) *Definitions.* As used in this section, the term:

(1) "Direct costs" include expenditures actually incurred in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing work (the basic rate of pay for the employee plus a factor to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

(2) "Search" includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. Searches may be done manually or by computer using existing programming. A line-by-line search will be conducted only when necessary to determine whether the document contains responsive information and will not be employed in those instances in which duplication of the entire document would be the less expensive and quicker method of complying with a request. "Search" does not include review of material to determine whether the material is exempt from disclosure (see paragraph (h)(4) of this section).

(3) "Duplication" refers to the process of making a copy of a document necessary to respond to a FOIA request. Such copies can take the form of paper copy, microform, audio-visual

materials, or machine readable documentation (e.g., magnetic tape or disk), among others. The copy provided must be in a form that is reasonably usable by requesters.

(4) "Review" refers to the process of examining documents located in response to a request that is for a commercial use (see paragraph (h)(5) of this section) to determine whether any portion of any document located is exempt from mandatory disclosure. It also includes processing any documents for disclosure, e.g., doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions. Charges may be assessed only for the initial review, i.e., the first time the applicability of a specific exemption is analyzed. Costs for a subsequent review are properly assessable only when a record or portion of a record withheld solely on the basis of an exemption later determined not to apply must be reviewed again to determine the applicability of other exemptions not previously considered.

(5) "Commercial use request" refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether a request properly belongs in this category, the Postal Service will look to the use to which the requester will put the documents requested. If the use is not clear from the request itself, or if there is reasonable cause to doubt the requester's stated use, the custodian shall seek additional clarification from the requester before assigning the request to this category.

(6) "Educational institution" refers to a pre-school, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(7) "Noncommercial scientific institution" refers to an institution that is not operated on a "commercial" basis as that term is defined in paragraph (h)(5) of this section, and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(8) "Representative of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Requests by news organizations for information that will be used for the furtherance of the organization's commercial interests, rather than for the dissemination of news to the public shall be considered commercial use requests. Examples of news media entities include television or radio stations broadcasting to the pubiic at large and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. A "freelance" journalist will be regarded as a representative of the news media if he can demonstrate a solid basis for expecting publication through a news organization, even though not actually employed by it. This may be demonstrated either by a publication contract with the news organization or by the past publication record of the requester.

[52 FR 13668, Apr. 24, 1987; as amended at 53 FR 49983, Dec. 13, 1988; 54 FR 7417, Feb. 21, 1989]

§ 265.9 Annual reports.

A report concerning the administration of the Freedom of Information Act and this part for the preceding calendar year is submitted to the Congress by March 1 of each year. The Records Officer shall prescribe the form and content of the report.

[45 FR 44271, July 1, 1980]

§ 265.10 Compliance with subpoena duces tecum court orders and summonses.

(a) *Compliance with subpoena duces tecum.* (1) Except as required by Part 262, produce other records of the Postal Service only in compliance with a subpoena duces tecum or appropriate court order.

(2) Time, leave, and payroll records of postal employees are subject to production when a subpoena duces tecum or appropriate court order has been properly served. The custodian of the records may designate a postal employee to present the records. The presentation by a designee rather than the employee named in the subpoena or court order must meet with the approval of the attorneys for each side. In addition, such records may be released if authorized in writing by the employee.

(3) If the subpoena involves a job-connected injury, the records are under the exclusive jurisdiction of the Office of Workers' Compensation Programs, Department of Labor. Requests for authorization to produce these records shall be addressed to: Office of Workers' Compensation Programs, U.S. Department of Labor, Washington, DC 20210-0001. Also notify the attorney responsible for the issuance of the subpoena or court order.

(4) Employee medical records are primarily under the exclusive jurisdiction of the U.S. Civil Service Commission. The Commission has delegated authority to the Postal Service and to the Commission's Regional Directors to release medical information, in response to proper requests and upon competent medical advice, in accordance with the following criteria:

(i) Except in response to a subpoena or court order, do not release any medical information about an employee to any non-Federal entity or individual without authorization from the employee.

(ii) With authorization from the employee, the Regional Postmasters General, Postal Data Center Directors, or regional counsels will respond as follows to a request from a non-Federal source for medical information:

(*a*) If, in the opinion of a Federal medical officer, the medical information indicates the existence of a malignancy, a mental condition, or other condition about which a prudent physician would hesitate to inform a person suffering from such a condition as to its exact nature and probable outcome, do not release the medical information to the employee or to any individual designated by him, except to a physician, designated by the employee in writing. If a subpoena or court order was issued, the responding official shall caution the moving party as to the possible dangers involved if the medical information is divulged.

(*b*) If, in the opinion of a Federal medical officer, the medical information does not indicate the presence of any condition which would cause a prudent physician to hesitate to inform a person of the exact nature and probable outcome of his condition, release it in response to a subpoena or court order, or to the employee or to any person, firm, or organization he authorizes in writing.

(*c*) If a Federal medical officer is not available, refer the request to the Civil Service Commission regional office with the medical certificates or other medical reports concerned.

(5) Do not release any records containing information as to the employee's security or loyalty.

(6) Honor subpoenas or court orders only when disclosure is authorized.

(7) When authorized to comply with a subpoena duces tecum, do not leave the original records with the court.

(b) *Compliance with summons.* (1) Comply with a summons requiring an appearance in court. Do not testify as to any matters for which an exemption under § 261.2(c) may be claimed. Call the Regional Counsel for instructions relating to exemptions.

(2) Do not present inspectors' reports or inspection Service records in either State or Federal courts in which the United States is not a party in interest, unless authorized by the Regional Chief Inspector, who will make a decision after consulting with Regional Counsel. If an attempt is made to compel the production of matters, decline to produce the information or matter, and state it may be exempted and cannot be disclosed or produced without specific approval of the Regional Chief Inspector, who will

make a decision after consulting with Regional Counsel. The Postal Service will offer every possible assistance to the courts, but the questions of disclosing information for which an exemption may be claimed is a matter of discretion.

[40 FR 7331, Feb. 19, 1975, as amended at 51 FR 26386, July 23, 1986]

Appendix A—Information Services Price List

When information is requested that must be retrieved by computer, the requester is charged for the resources required to furnish the information. Estimates are provided to the requester in advance and are based on the following price list.

Description of services	Price	Unit
A. System Utilization Services:		
Central Processor Unit (CPU): Based upon IBM 3090–200		
Performance Standard:		
Batch Processing	$3,000.00	Hour.
Time Sharing Option (TSO)	3,400.00	Hour.
Customer Information Control System (CICS).	3,400.00	Hour.
Integrated Data Base Management System (IDMS).	3,400.00	Hour.
Direct Access Storage Device (DASD):		
Channel Utilization (EXCPs—execution of channel programs).	.45	1,000 lines.
Tape Channel Utilization (EXCPs).	.80	1,000 lines.
Local Printing	.95	1,000 lines.
B. Personnel Charges:		
Manual Unit Personnel	30.00	Hour.
Systems & Programming Personnel.	42.00	Hour.

[54 FR 7417, Feb. 21, 1989]

PART 266—PRIVACY OF INFORMATION

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266.1 Purpose and scope.
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Authority: 39 U.S.C. 401; 5 U.S.C. 552a.

§ 266.1 Purpose and scope.

This part is intended to protect individual privacy and affects all personal information collection and usage activities of the entire U.S. Postal Service. This includes the information interface of Postal Service employees to other employees, to individuals from the public at large, and to any private organization or governmental agency.

[40 FR 45723, Oct. 2, 1975]

§ 266.2 Policy.

It is the policy of the U.S. Postal Service to ensure that any record within its custody that identifies or describes any characteristic or provides historical information about an individual or that affords a basis for inferring personal characteristics, or things done by or to such individual, including the record of any affiliation with an organization or activity, or admission to an institution, is accurate, complete, timely, relevant, and reasonably secure from unauthorized access. Additionally, it is the policy to provide the means for individuals to know: (a) Of the existence of all Postal Service Privacy Act systems of records, (b) the recipients and usage made of such information, (c) what information is optional or mandatory to provide to the Postal Service, (d) the procedures for individuals to review and request update to all information maintained about themselves, (e) the reproduction fees for releasing records, and (f) the procedures for individual legal appeal in cases of dissatisfaction.

[45 FR 44272, July 1, 1980]

§ 266.3 Responsibility.

(a) *Records Officer*. The Records Officer will insure Postal Service-wide compliance to this policy.

(b) *Custodian*. Custodians are responsible for adherence to this part within their respective units and in particular for affording individuals their rights to inspect and obtain copies of records concerning them.

(c) *Information System Executi*
These managers are responsible for reporting to the Records Officer the existence or porposed development

Privacy Act systems of records. They also must report any change that would alter the systems description as published in the FEDERAL REGISTER. They establish the relevancy of the information within those systems.

[40 FR 45723, Oct. 2, 1975, as amended at 45 FR 44272, July 1, 1980]

§ 266.4 Collection and disclosure of information about individuals.

(a) The following rules govern the collection of information about individuals thorughout Postal Service operations:

(1) The Postal Service will:

(i) Collect, solicit and maintain only such information about an individual as is relevant and necessary to accomplish a purpose required by statute or Executive Order,

(ii) Collect information, to the greatest extent practicable, directly from the subject individual when such information may result in adverse determinations about an individual's rights, benefits or privileges,

(iii) Inform any individual who has been asked to furnish information about himself whether that disclosure is mandatory or voluntary, by what authority it is being solicited, the principal purposes for which it is intended to be used, the routine uses which may be made of it, and any penalties and specific consequences for the individual, which are known to the Postal Service, which will result from refusal to furnish it.

(2) The Postal Service will not discriminate against any individual who fails to provide information about himself unless that information is required or necessary for the conduct of the system or program in which the individual desires to participate.

(3) No information will be collected (or maintained) describing how individuals exercise rights guaranteed by the First Amendment unless the Postmaster General specifically determines that such information is relevant and necessary to carry out a statutory purpose of the Postal Service.

(4) The Postal Service will not require individuals to furnish their Social Security account number or deny a right, privilege or benefit because of an individual's refusal to furnish the number unless it must be provided by Federal law.

(b) *Disclosures*—(1) *Disclosure: Limitations On.* The Postal Service will not disseminate information about an individual unless reasonable efforts have been made to assure that the information is accurate, complete, timely and relevant and unless:

(i) The individual to whom the record pertains has requested in writing that the information be disseminated, or

(ii) It has obtained the prior written consent of the individual to whom the record pertains, or

(iii) The dissemination is in accordance with paragraph (b)(2) of this section.

(2) Dissemination of personal information may be made:

(i) To a person pursuant to a requirement of the Freedom of Information Act (5 U.S.C. 552);

(ii) To those officers and employees of the Postal Service who have a need for such information in the performance of their duties;

(iii) For a routine use as contained in the system notices published in the FEDERAL REGISTER;

(iv) To a recipient who has provided advance adequate written assurance that the information will be used solely as a statistical reporting or research record, and to whom the information is transferred in a form that is not individually identifiable;

(v) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13, U.S.C.;

(vi) To the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the U.S. Government, or for evaluation by the Administrator of General Services or his designee to determine whether the record has such value;

(vii) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual, if upon such disclosure notification is transmitted to the last known address of such individual;

(viii) To a federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity, if such activity is authorized by law and if the head of the agency or instrumentality has made a written request to the Postal Service specifying the particular portion of the record desired and the law enforcement activity for which the record is sought;

(ix) To either House of Congress or its committees or subcommittees to the extent of matter within their jurisdiction;

(x) To the Comptroller General or any of his authorized representatives in the course of the performance of the duties of the General Accounting Office;

(xi) Pursuant to the order of a court of competent jurisdiction.

(3) *Names and Addresses of Postal Customers.* The disclosure of lists of names or addresses of Postal customers or other persons to the public is prohibited (39 U.S.C. 412). Names or addresses will be disclosed only in those cases permitted by 39 CFR 265.6(d) relating to the Release of Information.

(4) *Employee Credit References.* A credit bureau or commercial firm from which an employee is seeking credit may be given the following information upon request: grade, duty status, length of service, job title, and salary.

(5) *Employee Job References.* Prospective employers of a Postal employee or a former Postal employee may be furnished with the information in paragraph (b)(4) of this section, in addition to the date and reason for separation, if applicable.

(c) *Correction Disclosure.* Any person or other agency to which a personal record has been or is to be disclosed shall be informed of any corrections or notations of dispute relating thereto affecting the accuracy, timeliness or relevance of that personal record.

(d) *Recording of Disclosure.* (1) An accurate accounting of each disclosure will be kept in all instances except those in which disclosure is made to the subject of the record, or to Postal Service employees in the performance of their duties or is required by the Freedom of Information Act (5 U.S.C. 552).

(2) The accounting will be maintained for at least five (5) years or the life of the record, whichever is longer.

(3) The accounting will be made available to the individual named in the record upon inquiry, except for disclosures made pursuant to provision paragraph (b)(2)(viii) of this section relating to law enforcement activities.

[40 FR 45723, Oct. 2, 1975, as amended at 45 FR 44272, July 1, 1980]

§ 266.5 Notification.

(a) *Notification of Systems.* The following procedures permit individuals to determine the types of personal records systems maintained by the Postal Service.

(1) Upon written request, the Postal Service will notify any individual whether a specific system named by him contains a record pertaining to him. See § 266.6 for suggested form of request.

(2) The Postal Service shall publish annually in the FEDERAL REGISTER a notice of existence and character of all personal systems of records. This notice will contain the following information:

(i) Name and location of the system,

(ii) Nature and purposes of the system,

(iii) Categories of individuals on whom personal information is maintained and categories of personal information generally maintained in the system,

(iv) Confidentiality requirements and the extent to which access controls apply to such information,

(v) Postal Service policies and standards regarding the safeguarding and disclosure of information, information storage, duration of retention of information, and elimination of such information from the system,

(vi) Routine uses made by the Postal Service of the personal information contained in the system, including the categories of users and the purpose of the use,

(vii) Title and official address of the custodian,

(viii) Procedures by which an individual can be informed if a system contains personal information pertaining to him, gain access to such information, and contest the accuracy, completeness, timeliness, relevance and necessity for retention of the information.

(ix) Categories of sources of such personal information,

(x) System status—either developmental or operational.

(b) *Notification of Disclosure.* The Postal Service shall make reasonable efforts to serve notice on an individual before any personal information on such individual is made available to any person under compulsory legal process when such process becomes a matter of public record.

(c) *Notification of Amendment.* (See § 266.7 (b)(3) relating to amendment of records upon request.)

(d) *Notification of New Use.* Any newly intended use of personal information maintained by the Postal Service will be published in the FEDERAL REGISTER thirty (30) days before such use becomes operational. Public views may then be submitted to the Records Officer.

(e) *Notification of Exemptions.* The Postal Service will publish within the FEDERAL REGISTER its intent to exempt any system of records and shall specify the nature and purpose of that system.

[40 FR 45724, Oct. 2, 1975; 40 FR 48512, Oct. 16, 1975, as amended at 45 FR 44272, July 1, 1980]

§ 266.6 Procedures for requesting inspection, copying, or amendment of records.

The purpose of this section is to provide procedures by which an individual may have access and request amendment to personal information within a Privacy Act System of Records.

(a) *Submission of Requests*—(1) *Manner of submission.* Inquiries regarding the contents of records systems or access or amendment to personal information should be submitted in writing to the custodian of the official record, if known, or to the Records Officer, U.S. Postal Service, Washington, DC 20260-5010. Inquiries should be clearly marked, "Privacy Act Request". Any inquiry concerning a specific system of records should provide the Postal Service with the information contained under "Notification" for that system as published in the FEDERAL REGISTER. If the information supplied is insufficient to locate or identify the record, the requester will be notified promptly and, if possible, informed of additional information required. If the requester is not a Postal Service employee, he should designate the post office at which he wishes to review or obtain copies of records. Amendment requests contest the relevance, accuracy, timeliness or completeness of the record and will include a statement of the amendment requested.

(2) *Third party inquiries.* Anyone desiring to review or copy records pertaining to another person must have the written consent of that person.

(3) *Period for response by custodian.* Upon receipt of an inquiry, the custodian will respond with an acknowledgement of receipt within ten (10) days. If the inquiry requires the custodian to determine whether a particular record exists, the inquirer shall be informed of this determination as a part of the acknowledgement letter.

(b) *Compliance with Request for Access*—(1) *Notification of time and place for inspection.* When a requested record has been identified and is to be disclosed, the custodian shall ensure that the record is made available promptly and shall immediately notify the requester where and when the record will be available for inspection or copying. Postal Service records will normally be available for inspection and copying during regular business hours at the postal facilities at which they are maintained. The custodian may, however, designate other reasonable locations and times for inspection and copying of some or all of the records within his custody.

(2) *Identification of requester.* The requester must present personal identification sufficient to satisfy the custodian as to his identity prior to record review. Examples of sufficient identification are a valid driver's license, medicare card, and employee identification cards.

(3) *Responsibilities of requester.* The requester shall assume the following

responsibilities regarding the review of official personal records:

(i) Requester must agree not to leave Postal Services premises with official records unless specifically given a copy for that purpose by the custodian or his representative.

(ii) Requester must sign a statement indicating he has reviewed a specific record(s) or category of record.

(iii) Requester may be accompanied by a person he so chooses to aid in the inspection of information; however, requester must furnish the Postal Service with written authorization for such review in that person's presence.

(4) *Special rules for medical records.* A medical record shall be disclosed to the requester to whom it pertains unless, in the judgment of the medical officer, access to such record could have an adverse effect upon such individual. When the medical officer determines that the disclosure of medical information could have an adverse effect upon the individual to whom it pertains, the medical officer will transmit such information to a medical doctor named by the requesting individual.

(5) *Limitations on access.* Nothing in this section shall allow an individual access to any information compiled in reasonable anticipation of a civil action or proceeding. Other limitations on access are those specifically addressed in §§ 266.6(b)(4) and 266.9.

(6) *Response when compliance is not possible.* A reply denying a written request to review a record shall be in writing signed by the custodian or other appropriate official and shall be made only if such a record does not exist or does not contain personal information relating to the requester, or is exempt from disclosure. This reply shall include a statement regarding the determining factors of denial, and the right to appeal to denial to the General Counsel.

(c) *Compliance With Request for Amendment.* (1) Correct or eliminate any information that is found to be incomplete, inaccurate, not relevant to a statutory purpose of the Postal Service, or not timely and notify the requester when this action is complete, or

(2) Not later than thirty (30) working days after receipt of a request to amend, notify the reqester of a determination not to amend and of the requester's right to appeal, or to submit, in lieu of an appeal, a statement of reasonable length setting forth a position regarding the disputed information to be attached to the contested personal record.

(d) *Availability of Assistance in Exercising Rights.* The USPS Records Officer is available to provide an individual with assistance in exercising rights pursuant to this part.

[40 FR 45723, Oct. 2, 1975, as amended at 45 FR 44272, July 1, 1980; 51 FR 26386, July 23, 1986]

§ 266.7 Appeal procedure.

(a) *Appeal Procedure.* (1) If a request to inspect, copy, or amend a record is denied, in whole or in part, or if no determination is made within the period prescribed by this part, the requester shall appeal to the General Counsel, U.S. Postal Service, Washington, DC 20260-1100.

(2) The requester should submit his appeal in writing within thirty (30) days of the date of denial, or within ninety (90) days of such request if the appeal is from a failure of the custodian to make a determination. The letter of appeal should include, as applicable:

(i) Reasonable identification of the record access to which or the amendment of which was requested.

(ii) A statement of the Postal Service action or failure to act and of the relief sought.

(iii) A copy of the request, of the notification of denial and of any other related correspondence.

(3) Any record found on appeal to be incomplete, inaccurate, not relevant, or not timely, shall within thirty (30) working days of the date of such findings be appropriately amended.

(4) The decision of the General Counsel, constitutes the final decision of the Postal Service on the right of the requester to inspect, copy, change, or update a record. The decision on the appeal shall be in writing and in the event of a denial shall set forth the reasons for such denial and state

the individual's right to obtain judicial review in a district court. An indexed file of decisions on appeals shall be maintained by the Records Officer.

(b) *Submission of Statement of Disagreement.* If the final decision concerning a request for the amendment of a record does not satisfy the requester, any statement of reasonable length provided by that individual setting forth a position regarding the disputed information will be accepted and attached to the relevant personal record.

(c) *Availability of Assistance in Exercising Rights.* The USPS Records Officer is available to provide an individual with assistance in exercising rights pursuant this part.

[40 FR 45723, Oct. 2, 1975, as amended at 41 FR 24709, June 18, 1976; 45 FR 44273, July 1, 1980; 51 FR 26386, July 23, 1986]

§ 266.8 Schedule of fees.

(a) *Policy.* The purpose of this section is to establish fair and equitable fees to permit duplication of records for subject individuals (or authorized representatives) while recovering the full allowable direct costs incurred by the Postal Service.

(b) *Duplication.* (1) For duplicating any paper or micrographic record or publication or computer report, the fee is $.15 per page, except that the first 100 pages furnished in response to a particular request shall be furnished without charge. See paragraph (d) of this section for fee limitations.

(2) The Postal Service may at its discretion make coin-operated copy machines available at any location. In that event, requesters will be given the opportunity to make copies at their own expense.

(3) The Postal Service normally will not furnish more than one copy of any record. If duplicate copies are furnished at the request of the requester, the per page fee is charged for each copy of each duplicate page without regard to whether the requester is eligible for free copies pursuant to § 266.8(b)(1).

(c) *Aggregating requests.* When the custodian reasonably believes that a requester is attempting to break a request for similar types of records down into a series of requests in order to evade the assessment of fees, the custodian may aggregate the requests and charge accordingly.

(d) *Limitations.* No fee will be charged an individual for the process of retrieving, reviewing, or amending a record pertaining to that individual.

[52 FR 38230, Oct. 15, 1987]

§ 266.9 Exemptions.

(a) Subsections 552a (j) and (k) of Title 5, U.S.C., empower the Postmaster General to exempt systems of records meeting certain criteria from various other subsections of section 552a. With respect to systems of records so exempted, nothing in this part shall require compliance with provisions hereof implementing any subsections of section 552a from which those systems have been exempted.

(b) Pursuant to, and to the extent permitted by, subsection 552a(j) and (k) of title 5, U.S.C., the following systems of records maintained by the Postal Service are exempted from the designated subsections of section 552a of Title 5, U.S.C.:

(1) Inspection Requirements—Investigative File System, USPS 080.010 from 5 U.S.C. 552a(c) (3) and (4), (d) (1)-(4), (e)(1)-(3), (e)(4) (G) and (H), (e) (5) and (8), (f), (g), and (m).

(2) Inspection Requirements—Mail Cover Program, USPS 080.020 from 5 U.S.C. 552a (c)(3) and (4), (d)(1)-(4), (e) (1)-(3), (e)(4)(G) and (H), (e)(5), (e)(8), (f), (g) and (m).

(3) Personnel Records—Preemployment Investigation Records, USPS 120.110 from 5 U.S.C. 552a (d) (1)-(4) and (e)(1) to the extent that information in the system is subject to exemption under 5 U.S.C. 552a(k)(5) as relating to the identity of a source who furnished information to the Government in confidence as a part of an investigation conducted solely for the purpose of determining suitability, eligibility, or qualifications of an individual for employment.

(4) Personnel Records—Recruiting, Examining, and Appointment Records, USPS 120.151 from 5 U.S.C. 552a (d) (1)-(4), (e)(1), (e)(4) (G) and (H), and (f) to the extent that information in the system is subject to exemption pursuant to 5 U.S.C. 552a(k) (5) and

(6) as relating to the compromise of the objectivity or fairness of the testing or examination process and to the identity of a source who has furnished information to the Government in confidence as a part of an investigation conducted solely for the purpose of determining suitability, eligibility, or qualifications of an individual for employment.

(5) Personnel Records—Personnel Research and Test Validation Records, USPS 120.120 from 5 U.S.C. 552a (d)(1)-(4), (e)(4)(G) and (H), and (f) to the extent that information in the system is subject to exemption pursuant to 5 U.S.C. 552a(k)(6) as relating to testing and examination material.

(6) Equal Employment Opportunity—EEO Discrimination Complaint Investigations. USPS 030.010 from 5 U.S.C. 552a (d)(1)-(4), (e)(4) (G) and (H) and (f) to the extent that information in the system is subject to exemption pursuant to 5 U.S.C. 552a(k)(2) as material compiled for law enforcement purposes and (k)(5) as relating to the identity of a source who has furnished information to the Government in confidence as a part of an investigation conducted solely for the purpose of determining suitability, eligibility, or qualifications of an individual for employment.

(7) Personnel Records—Postmaster Selection Program Records, USPS 120.130 from 5 U.S.C. 552a (d) (1)-(4) and (e)(1) to the extent that information in the system is subject to exemption under 5 U.S.C. 552a(k)(5) as relating to the identity of a source who furnished information to the Government in confidence as a part of an investigation conducted solely for the purpose of determining suitability, eligibility, or qualifications of an individual for employment.

(8) Personnel Records—Career Development and Training Records, USPS 120.152 from 5 U.S.C. 552a (d) (1)-(4), (e)(4) (G) and (H), and (f) to the extent that information in the system is subject to exemption pursuant to 5 U.S.C. 552a(k)(6) as relating to the compromise of the objectivity or fairness of the testing or examination process.

[40 FR 45723, Oct. 2, 1975, as amended at 42 FR 21471, Apr. 27, 1977; 43 FR 41391, Sept. 18, 1978; 45 FR 44273, July 1, 1980; 47 FR 17814, Apr. 26, 1982]

PART 267—PROTECTION OF INFORMATION

Sec.
267.1 Purpose and scope.
267.2 Policy.
267.3 Responsibility.
267.4 Information security standards.
267.5 National Security Information.

AUTHORITY: 39 U.S.C. 401; Pub. L. 93-579, 88 Stat. 1896.

§ 267.1 Purpose and scope.

This part addresses the protection of information and records in the custody of the Postal Service throughout all phases of information flow and within all organization components and includes micromated, manual and data processing information.

[40 FR 45726, Oct. 2, 1975]

§ 267.2 Policy.

Consistent with the responsibility of the Postal Service to make its official records available to the public to the maximum extent required by the public interest, and to ensure the security, confidentiality, and integrity of official records containing sensitive or national security information, it is the policy of the Postal Service to maintain definitive and uniform information security safeguards. These safeguards will have as their purpose: (a) Ensuring the effective operation of the Postal Service through appropriate controls over critical information and (b) Protecting personal privacy, the public interest, and the national security by limiting unauthorized access to both restricted and national security information.

[44 FR 51224, Aug. 31, 1979]

§ 267.3 Responsibility.

(a) *Chief Postal Inspector and USPS Records Officer.* The Chief Inspector and the Records Officer will insure within their respective areas of jurisdiction:

(1) Postal Service-wide compliance with this policy and related standards and procedures, and

(2) That remedial action is taken when violations or attempted violations of these standards and procedures occur.

(b) *Custodians.* All custodians are responsible for insuring that information security standards and procedures are followed and that all relevant employees participate in the information security awareness programs.

[40 FR 45726, Oct. 2, 1975]

§ 267.4 Information security standards.

(a) The Postal Service will operate under a uniform set of information security standards which address the following functional aspects of information flow and management:

(1) Information system development,

(2) Information collection,

(3) Information handling and processing,

(4) Information dissemination and disclosure,

(5) Information storage and destruction,

(b) Supplementing this list are information security standards pertaining to the following administrative areas:

(1) Personnel selection and training,

(2) Physical environment protection,

(3) Contingency planning,

(4) Information processing or storage system procurement,

(5) Contractual relationships.

[40 FR 45726, Oct. 2, 1975; 40 FR 48512, Oct. 16, 1975]

§ 267.5 National Security Information.

(a) *Purpose and scope.* The purpose of this section is to provide regulations implementing Executive Order 12356 National Security Information (hereinafter referred to as the Executive Order) which deals with the protection, handling and classification of national security information.

(b) *Definitions.* (1) In this section, "National Security Information" means information on the national defense and foreign relations of the United States that has been determined under the Executive Order or prior Orders to require protection against unauthorized disclosure and has been so designated.

(2) "Derivative Classification" means the carrying forward of a classification from one document to a newly created document that contains national security information which is in substance the same as information that is currently classified.

(3) "In the Custody of the Postal Service" means any national security information transmitted to and held by the U.S. Postal Service for the information and use of postal officials. (This does not include any national security information in the U.S. Mails.)

(c) *Responsibility and authority.* (1) The Postal Service Records Officer serves as the USPS National Security Information Oversight Officer. This officer shall:

(i) Conduct an active oversight program to ensure that the appropriate provisions of these regulations are complied with;

(ii) Chair a committee composed of the Records Officer, the Chief Postal Inspector (USPS Security Officer), the General Counsel, the Executive Assistant to the Postmaster General, and the Director, Operating Policies Office, or their designees, with authority to act on all suggestions and complaints concerning the Postal Service's compliance with these regulations;

(iii) Ensure that appropriate and prompt corrective action is taken whenever a postal employee knowingly, willfully and without authorization:

(A) Discloses national security information properly classified under the Executive order, or prior orders,

(B) Compromises properly classified information through negligence, or

(C) Violates any provisions of these regulations or procedures;

(iv) Inform the Director, Information Security Oversight Office, General Services Administration, whenever violations of paragraph (c)(1)(iii) of this section occur;

(v) In conjunction with the USPS Security Officer, prepare and issue instructions for the control, protection, and derivative classification of national security information in the custody of, and use by, the Postal Service. These instructions shall include requirements that:

(A) A demonstrable need for access to national security information is established before requesting the initiation of administrative clearance procedures;

(B) Ensure that the number of people granted access to national security information is reduced to and maintained at the minimum number consistent with operational requirements and needs;

(vi) Establish, staff and direct activities for controlling documents containing national security information at USPS Headquarters and provide functional direction to each Regional Records Control Officer;

(vii) As part of the overall program implementation, develop a training program to familiarize appropriate postal employees of the requirements for control, protection and classification; and

(viii) Report to the USPS Security Officer any incidents of possible loss or compromise of national security information.

(2) The USPS Security Officer (the Chief Postal Inspector) shall:

(i) Provide technical guidance to the USPS Records Officer in implementing the national security information program;

(ii) Conduct investigations into reported program violations or loss or possible compromise of national security information and report any actual loss or compromise to the originating agency;

(iii) Periodically conduct an audit of the USPS national security information program;

(iv) Process requests for sensitive clearances; conduct the appropriate investigations and grant or deny a sensitive clearance to postal employees having an official "need to know" national security information; and

(v) Report to the Attorney General any evidence of possible violations of federal criminal law by a USPS employee and of possible violations by any other person of those federal criminal laws.

(3) All postal employees who have access to national security information shall:

(i) Sign a nondisclosure agreement;

(ii) Be familiar with and follow all Program regulations and instructions;

(iii) Actively protect and be accountable for all national security information entrusted to their care;

(iv) Disclose national security information only to another individual who is authorized access;

(v) Immediately report to the USPS Records Officer and the USPS Security Officer any suspected or actual loss or compromise of national security information; and

(vi) Be subject to administrative sanctions should requirements (ii) through (v) not be followed.

(d) *Derivative classification.* When applying derivative classifications to documents created by the Postal Service, the Postal Service shall:

(1) Respect original classification decisions;

(2) Verify the information's current level of classification so far as practicable before applying the markings; and

(3) Carry forward to any newly created documents the assigned dates or events for declassification or review and any additional authorized markings in accordance with section 2 of the Executive order.

(e) *General provisions*—(1) *Dissemination.* National security information received by the U.S. Postal Service shall not be further disseminated to any other agency without the consent of the originating agency.

(2) *Disposal.* Classified documents no longer needed by the Postal Service shall be either properly destroyed or returned to the originating agency.

(3) Freedom of Information Act or mandatory review requests.

(i) Requests for classified documents made under the Freedom of Information Act (FOIA) and mandatory review requests (requests under Section 3-501 of the Executive Order for the declassification and release of information), including requests by the news media should be submitted to: USPS Records Officer, U.S. Postal Service, Washington, DC 20260-5010.

(ii) In response to an FOIA request or a mandatory review request, the Postal Service shall not refuse to confirm the existence or non-existence of a document, unless the fact of its existence or non-existence would itself be classifiable.

(iii) The Postal Service shall forward all FOIA and mandatory review requests for national security information in its custody (including that within records derivatively classified by the USPS) to the originating agency for review unless the agency objects on the grounds that its association with the information requires protection. The requester shall be notified that:

(A) The request was referred; and

(B) The originating agency will provide a direct response.

(4) *Research requests.* Requests from historical researchers for access to national security information shall be referred to the originating agency.

(39 U.S.C. 401 (2), (10), 404(a)(7))

[44 FR 51224, Aug. 31, 1979, as amended at 45 FR 30069, May 7, 1980; 49 FR 22476, May 30, 1984]

PART 268—PRIVACY OF INFORMATION—EMPLOYEE RULES OF CONDUCT

Sec.
268.1 General principles.
268.2 Consequences of non-compliance.

§ 268.1 General principles.

In order to conduct its business, the Postal Service has the need to collect various types of personally identifiable information about its customers, employees and other individuals. Information of this nature has been entrusted to the Postal Service, and employees handling it have a legal and ethical obligation to hold it in confidence and to actively protect it from uses other than those compatible with the purpose for which the information was collected. This obligation is legally imposed by the Privacy Act of 1974, which places specific requirements upon all Federal agencies, including the Postal Service, and their employees. In implementation of these requirements, the following rules of conduct apply:

(a) Except as specifically authorized in § 266.4(b)(2) of this chapter, no employee shall disclose, directly or indirectly, the contents of any record about another individual to any person or organization. Managers are to provide guidance in this regard to all employees who must handle such information.

(b) No employee will maintain a secret system of records about individuals. All records systems containing personally identifiable information about individuals must be reported to the Records Officer.

(c) All employees shall adhere strictly to the procedures established by the U.S. Postal Service to ensure the confidentiality and integrity of information about individuals that is collected, maintained and used for official Postal Service business. Employees shall be held responsible for any violation of these procedures.

(39 U.S.C. 401)

[45 FR 44273, July 1, 1980]

§ 268.2 Consequences of non-compliance.

(a) The Privacy Act authorizes any individual, whether or not an employee, to bring a civil action in U.S. District Court to obtain judicial review of the failure of the Postal Service to comply with the requirements of the Act or its implementing regulations. In certain instances of willful or intentional non-compliance, the plaintiff may recover damages from the Postal Service in the minimum amount of $1,000 together with costs of the action and attorney fees.

(b) The Act provides criminal sanctions for individuals, including employees, who violate certain of its provisions.

(1) Any officer or employee who, by virtue of his employment or position, has possession of, or access to, official records which contain individually identifiable information and who, knowing that disclosure of the specific material is prohibited by Postal Service regulations, willfully discloses the material to a person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than $5,000.

(2) Any officer or employee who willfully maintains a system of records without meeting the notice requirements set forth in Postal Service regulations shall be guilty of a misdemeanor and fined not more than $5,000.

(3) Any person who knowingly and willfully requests or obtains any

record concerning another individual from the Postal Service under false pretense shall be guilty of a misdemeanor and fined not more than $5,000.

(c) In addition to the criminal sanctions, any employee violating any provisions of these rules of conduct is subject to disciplinary action which may result in dismissal from the Postal Service.

(39 U.S.C. 401; Pub. L. 93-579, 88 Stat. 1896)

[40 FR 45726, Oct. 2, 1975]

PART 273—ADMINISTRATION OF PROGRAM FRAUD CIVIL REMEDIES ACT

Sec.

273.1 Purpose.
273.2 Definitions.
273.3 Liability for false claims and statements.
273.4 Non-exclusivity of penalty authority.
273.5 Investigations of alleged violations.
273.6 Evaluation by reviewing official.
273.7 Concurrence of Attorney General.
273.8 Issuance of complaint.
273.9 Collection of civil penalties or assessments.
273.10 Reports.

Authority: 31 U.S.C. Chapter 38; 39 U.S.C. 401.

Source: 52 FR 12901, Apr. 20, 1987.

§ 273.1 Purpose.

This part establishes procedures for imposing civil penalties and assessments under the Program Fraud Civil Remedies Act of 1986 (codified at 31 U.S.C. 3801-3812) against any person who makes, submits, or presents, or causes to be made, submitted, or presented, a false fictitious, or fraudulent claim or written statement to the Postal Service. Procedures governing the hearing and appeal rights of any person alleged to be liable for such penalties and assessments are set forth in Part 962 of this title.

§ 273.2 Definitions.

(a) "Claim" means any request, demand, or submission:

(1) Made to the Postal Service of property, services, or money (including money representing grants, loans, insurance, or benefits); or

(2) Made to a recipient of property, services, or money from the Postal Service or to a party to a contract with the Postal Service:

(i) For property or services if the United States:

(A) Provided such property or services;

(B) Provided any portion of the funds for the purchase of such property or services; or

(C) will reimburse such recipient or party for the purchase of such property or services; or

(ii) For the payment of money (including money representing grants, loans, insurance or benefits) if the United States:

(A) Provided any portion of the money requested or demanded; or

(B) Will reimburse such recipient or party for any portion of the money paid on such request or demand; or

(3) Made to the Postal Service which has the effect of decreasing an obligation to pay or account for property, services, or money.

(b) "Complaint" refers to the administrative Complaint served by the Reviewing Official on a Respondent pursuant to § 273.8.

(c) "Investigating Official" refers to the Chief Postal Inspector of the Postal Service or any designee within the United States Postal Inspection Service who serves in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS-16 under the General Schedule.

(d) "Judicial Officer" refers to the Judicial Officer or Acting Judicial Officer of the United States Postal Service or for purposes other than specified in § 962.21 of this title any designee within the Judicial Officer Department.

(e) "Knows or has reason know," for purposes of establishing liability under 31 U.S.C. 3802, means that, with respect to a claim or statement, although no proof of specific intent to defraud is required, a person:

(1) Has actual knowledge that the claim or statement is false, fictitious or fraudulent;

(2) Acts in deliberate ignorance of the truth or falsity of the claim or statement; or

(3) Acts in reckless disregard of the truth or falsity of the claim or statement.

(f) "Person"refers to any individual, partnership, corporation, association, or private organization.

(g) "Postmaster General" refer to the Postmaster General of the United States or his designee.

(h) "Presiding Officer" refers to an Administrative Law Judge designated by the Judicial Officer to conduct a hearing authorized by 31 U.S.C. 3803 in accordance with Part 962 of this title.

(i) "Respondent" refers to any person alleged to be liable for civil penalty or assessment under 31 U.S.C. 3802.

(j) "Reviewing Official" refers to the General Counsel of the Postal Service or any designee within the Law Department who serves in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS-16 under the General Schedule.

(k) "Statement" means any representation, certification, affirmation, document, record, or accounting or bookkeeping entry made:

(1) With respect to a claim or to obtain the approval or payment of a claim (including relating to eligibility to make a claim); or

(2) With respect to (including relating to eligibility for)—

(i) A contract with, or a bid or proposal for a contract with; or

(ii) A grant, loan, or benefit from, the Postal Service, or any State, political subdivision of a State, or other party, if the United States Government provides any portion of the money or property under such contract or for such grant, loan, or benefit, or if the Government will reimburse such State, political subdivision, or party for any portion of the money or property under such contract or for such grant, loan or benefit.

§ 273.3 Liability for false claims and statements.

Section 3802 of title 31, United States Code, provides for liability as follows:

(a) *Claims.* (1) Any person who makes, presents, or submits, or causes to be made, presented, or submitted, a claim that the person knows or has reason to know—

(i) Is false, fictitious, or fraudulent; or

(ii) Includes or is supported by any written statement asserting a material fact which is false, fictitious, or fraudulent; or

(iii) Includes or is supported by any written statement that—

(A) Omits a material fact;

(B) Is false, fictitious, or fraudulent as a result of such omission; and

(C) Is a statement in which the person making, presenting, or submitting such statement has a duty to include such material fact; or

(iv) Is for payment for the provision of property or services which the person has not provided as claimed,

shall be subject to, in addition to any other remedy that may be prescribed by law, a civil penalty of not more than $5,000 for each such claim.

(2) Each voucher, invoice, claim form, or other individual request or demand for property, services, or money constitutes a separate claim.

(3) A claim shall be considered made, presented, or submitted to the Postal Service, recipient, or party when such claim is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of the Postal Service, recipient, or party.

(4) Each claim for property, services, or money is subject to the civil penalty referred to in paragraph (a)(1) of this section regardless of whether such property, service, or money is actually delivered or paid.

(5) If the Government has made payment on a claim, a person subject to the civil penalty referred to in paragraph (a)(1) of this section shall also be subject to an assessment of not more than twice the amount of such claim or twice the amount of that portion thereof that is determined to be in violation of paragraph (a)(1) of this section. This assessment shall be in lieu of damages subtained by the United States because of such claim.

(b) *Statements.* (1) Any person who makes, presents, or submits, or causes to be made, presented, or submitted, a written statement that—

(i) The person knows or has reason to know—

(A) Asserts a material fact which is false, fictitious, or fraudulent; or

(B) Is false, fictitious, or fraudulent because it omits a material fact that the person making, presenting or submitting such statement had a duty to include in such statement; and

(ii) Contains or is accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents of the statement,

shall be subject to, in addition to any other remedy that may be prescribed by law, a civil penalty of not more than $5,000 for each such statement.

(2) Each written representation, certification, or affirmation constitutes a separate statement.

(3) A statement shall be considered made, presented, or submitted to the Postal Service when such statement is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of the Postal Service.

(c) In any case in which it is determined that more than one person is liable for making a claim or statement under this section, the civil penalty referred to in paragraph (a)(1) of this section may be imposed on each such person without regard to the amount of any penalties collected or demanded from others.

(d) In any case in which it is determined that more than one person is liable for making a claim under this section on which the Government has made payment, an assessment may be imposed against any such person or jointly and severally against any combination of such persons. The aggregate amount of the assessments collected with respect to such claim shall not exceed twice the portion of such claim determined to be in violation of paragraph (a)(1) of this section.

§ 273.4 Non-exclusivity of penalty authority.

(a) A determination by the Reviewing Official that there is adequate evidence to believe that a person is liable under 31 U.S.C 3802, or a final determination that a person is liable under such statute, may provide the Postal Service with grounds for commencing any administrative or contractual action against such person which is authorized by law and which is in addition to any action against such person under Chapter 38 of title 31, United States Code.

(b) In the case of an administrative or contractual action to suspend or debar any person from eligibility to enter into contracts with the Postal Service, a determination referred to in paragraph (a) of this section shall not be considered as a conclusive determination of such person's responsibility pursuant to Postal Service procurement regulations.

§ 273.5 Investigations of alleged violations.

(a) Investigations of allegations of liability under 31 U.S.C. 3802 shall be conducted by the Investigating Official.

(b)(1) For purposes of an investigation under this part, the Investigating Official may issue a subpoena requiring the production of all information, documents, reports, answers, records, accounts, papers, and data not otherwise reasonably available to the Postal Service. Any subpoena issued by the Investigating Official shall cite 31 U.S.C. 3804(a) as the authority under which it is issued, shall be signed by the Investigating Official, and shall command each person to whom it is directed to produce the specified documentary material at a prescribed time and place.

(2) In the case of contumacy or refusal to obey a subpoena issued pursuant to paragraph (b)(1) of this section, the district courts of the United States have jursidiction to issue an appropriate order for the enforcement of such subpoena. Any failure to obey such order of the court may be punishable as contempt. In any case in which the Postal Service seeks the enforcement of a subpoena under under this section, the Postal Service shall request the Attorney General to petition the district court for the district in which the person receiving the subpoena re-

sides or conducts business to issue such an order.

(c) Upon completing an investigastion under this part, the Investigating Official shall submit to the Reviewing Official a reporting containing the findings and conclusions of his investigation, including:

(1) A description of the claims or statements for which liability under 31 U.S.C. 3802 is alleged;

(2) A description of any evidence which supports allegations of liability under 31 U.S.C. 3802, or where applicable, a description of any evidence that tends to support a conclusion that such statute has not been violated;

(3) An estimate of the amount of money or the value of property or services allegedly requested or demanded in violation of 31 U.S.C. 3802;

(4) A statement of any exculpatory or mitigating circumstances which may relate to the claims or statements under investigation;

(5) A statement of the amount of penalties and assessments that, considering the information described in paragraphs (c) (3) and (4) of this section, the Investigating Official recommends be demanded from the person alleged to be liable; and

(6) An estimate of the prospects of collecting the amount specified in paragraph (c)(5) of this section, and any reasons supporting such estimate.

(d) Nothing in these regulations modifies any responsibility of the Investigating Official to report violations of criminal law to the Attorney General

§ 273.6 Evaluation by reviewing official.

(a) Based upon the investigatory report prepared by the Investigating Offical, the Reviewing Official shall determine whether there is adequate evidence to believe that a person is liable under 31 U.S.C. 3802, and , if so, whether prosecution would likely result in the imposition and collection of civil penalties and applicable assessments.

(b) If the Reviewing Offical determines that a case has merit and should be referred to the Judicial Officer for assignment to a Presiding Officer, he must first transmit to the Attorney General a written notice containing the following information:

(1) A statement setting forth the Reviewing Official's reasons for proposing to refer the case to a Presiding Officer;

(2) A description of the claims or statements for which liability under 31 U.S.C. 3802 is alleged;

(3) A statement specifying the evidence that supports the allegations of liability;

(4) An estimate of the amount of money or the value of property or services allegedly requested or demanded in violation of 31 U.S.C. 3802;

(5) A statement of any exculpatory or mitigating circumstances which may relate to the claims or statements under investigation;

(6) A statement of the amount of penalties and assessments that, considering the factors listed in paragraphs (b)(4) and (5) of this section, the Reviewing Official recommends be demanded from the person alleged to be liable; and

(7) A statement that, in the opinion of the Reviewing Official, there is a reasonable prospect of collecting the amount specified in paragraph (b)(6) of this section and the reasons supporting such statement.

(c) No allegations of liability under 31 U.S.C. 3802 with respect to any claim made, presented, or submitted by any person shall be referred to the Judicial Officer if the Reviewing Official determines that (1) an amount of money in excess of $150,000; or (2) property or service with a value in excess of $150,000 is requested or demanded in violation of section 3802 in such claim or in a group of related claims which are submitted at the time such claim is submitted.

§ 273.7 Concurrence of Attorney General.

(a) The Attorney General is required by 31 U.S.C. 3803(b) to respond to the Reviewing Official's written notice described in § 273.6 within 90 days. The Reviewing Official may refer allegations of liability to the Judicial Officer only if the Attorney General or his designee approves such action in a written statement which specifies:

(1) That the Attorney General or his designee approves the referral to the Judicial Officer of the allegations of liability set forth in the notice described in § 273.6; and

(2) That the initiation of a proceeding under the Program Fraud Civil Remedies Act is appropriate.

(b) If at any time after the Attorney General approves the referral of a case to the Judicial Officier, the Attorney General or his designee transmits to the Postmaster General a written finding that the continuation of any proceeding under the Program Fraud Civil Remedies Act with respect to a claim or statement may adversely affect any pending or potential criminal or civil action related to such claim or statement, such proceeding shall be immediately stayed and may be resumed only upon written authorization of the Attorney General.

§ 273.8 Issuance of complaint.

(a) If the Attorney General or his designee approves the referral of allegations of liability to the Judicial Officer, the Reviewing Official shall serve on the Respondent, pursuant to paragraph (b) of this section, a Complaint, which:

(1) Specifies the allegations of liability against the Respondent, including the statutory basis for liability;

(2) Identifies the claims or statements that are the basis for the alleged liability, and the reasons why liability allegedly arises from such claims or statements;

(3) Specifies the amount of penalties or assessments the Postal Service seeks to impose;

(4) Informs the Respondent of his right to request or oral hearing before, or a decision on the record by, a Presiding Officer concerning the allegations of liability and the amount of proposed penalties or assessments;

(5) Informs the Respondent of how to request a hearing described in paragraph (a)(4) of this section;

(6) Includes a copy of the procedures which govern hearings under the Program Fraud Civil Remedies Act, and which are set forth in Part 962 of this title; and

(7) Notifies the Respondent that his or her failure to request a hearing on the issues raised by the Complai within 30 days of its receipt may resu in the imposition of the proposed pe alty and assessments pursuant t §§ 962.4(a) and 962.15(d) of this title.

(b) Service of a Complaint issue under paragraph (a) of this sectio must be effected by registered or cert fied mail, return-receipt requested, o by personal delivery. In the case o personal service, the person makin service shall, if possible, secure fro the person sought to be served, or h or her agent, a written acknowled ment of receipt, showing the date an time of such receipt. If the perso upon whom service is made declines t acknowledge receipt, the person e fecting service shall execute a stat ment, indicating the time, place an manner of service, which shall consti tute evidence of service.

§ 273.9 Collection of civil penalties or a sessments.

(a) Any penalty or assessment im posed under the Program Fraud Civ Remedies Act may be recovered in civil action brought by the Attorne General. In any such action, no matte that was raised or that could hav been raised in a hearing conducte under Part 962 of this title or purs ant to judicial review under 31 U.S.C 3805 may be raised as a defense an the determination of liability and th determination of amounts of penaltie and assessments shall not be subje to review. A civil action to recover penalty or assessment shall be com menced within three years after th date on which the determination of li ability for such penalty or assessme becomes final.

(b) The amount of any penalty or a sessment which has become final ma be collected by administrative offset i accordance with 31 U.S.C 3716, 3807.

(c) Any penalty or assessment im posed by the Postal Service under thi part shall be deposited in the Post Service Fund established by sectio 2003 of title 39.

§ 273.10 Reports.

(a) Not later than October 31 each year, the Postmaster Gener shall prepare and transmit to the propriate committees and subcommittees of the Congress an annual report summarizing actions taken under the Program Fraud Civil Remedies Act during the most recent 12-month period ending the previous September 30.

(b) The report referred to in paragraph (a) of this section shall include the following information for the period covered by the report:

(1) A summary of matters referred by the Investigating Official to the Reviewing Official under this part;

(2) A summary of matters transmitted to the Attorney General under this part;

(3) A summary of all hearings conducted by a Presiding Officer under Part 962 of this title, and the results of such hearings; and

(4) A summary of the actions taken during the reporting period to collect any civil penalty or assessment imposed under the Program Fraud Civil Remedies Act.

Damage to or Destruction of Firm Mailings

PART 281—FIRM MAILINGS DAMAGED OR DESTROYED THROUGH TRANSPORTATION ACCIDENTS OR CATASTROPHES

Sec.
281.1 Notification of firm mailers.
281.2 Action required by processing postal officials.
281.3 Postal inspector responsibilities.
281.4 Disclaimer.

AUTHORITY: 39 U.S.C. 401, 403, and 404.

§ 281.1 Notification of firm mailers.

Whenever bulk firm mail shipments are involved in transportation accidents or catastrophes, such as train or highway accidents, fire, flood, etc., it will be the responsibility of the sectional center director of customer services at the office of mailing to give known mailers timely notification of the incident and its effect on their mail shipment(s).

[39 FR 20974, June 17, 1974, as amended at 40 FR 2179, Jan. 10, 1975]

§ 281.2 Action required by processing postal officials.

Postal officials processing salvable mail recovered from the scene of an accident or catastrophe are responsible for giving timely notification of the incident to the sectional center director of customer services at the office of mailing. The notification should include, but not be limited to:

(a) The determinable names of the major mailers involved;

(b) The nature and extent of damage or destruction;

(c) Anticipated delivery delay; and

(d) If known, the shipment delivery destination(s).

[39 FR 20974, June 17, 1974, as amended at 40 FR 2179, Jan. 10, 1975]

§ 281.3 Postal inspector responsibilities.

The postal inspector investigating the incident should assure that the processing postal officials are fulfilling their notification responsibilities on a timely basis. Should the situation arise where no postal officials are involved in processing affected mail, then the investigating postal inspector will take necessary action to insure that appropriate notification is made.

[39 FR 20974, June 17, 1974]

§ 281.4 Disclaimer.

The Postal Service will not be liable in damages for any loss occasioned by any failure to notify firm mailers in accordance with this part of damage to or destruction of firm mailings.

[39 FR 20974, June 17, 1974]

SUBCHAPTER E—RESTRICTIONS ON PRIVATE CARRIAGE OF LETTERS

PART 310—ENFORCEMENT OF THE PRIVATE EXPRESS STATUTES

Sec.
310.1 Definitions.
310.2 Unlawful carriage of letters.
310.3 Exceptions.
310.4 Responsibility of carriers.
310.5 Payment of postage on violation.
310.6 Advisory opinions.
310.7 Amendment of regulations.

Authority: 39 U.S.C. 401, 404, 601-606; 18 U.S.C. 1693-1699.

Source: 39 FR 33211, Sept. 16, 1974, unless otherwise noted.

§ 310.1 Definitions.

(a) "Letter" is a message directed to a specific person or address and recorded in or on a tangible object, subject to the following:

(1) Tangible objects used for letters include, but are not limited to, paper (including paper in sheet or card form), recording disks, and magnetic tapes. Tangible objects used for letters do not include (i) objects the material or shape and design of which make them valuable or useful for purposes other than as media for long-distance communications, unless they are actually used as media for personal and business correspondence, and (ii) outsized, rigid objects not capable of enclosure in envelopes, sacks, boxes or other containers commonly used to transmit letters or packets of letters.

(2) "Message" means any information or intelligence that can be recorded as described in paragraph (a)(4) of this section.

(3) A message is directed to a "specific person or address" when, for example, it, or the container in which it is carried, singly or with other messages, identical or different, is marked for delivery to a specific person or place, or is delivered to a specific person or place in accordance with a selective delivery plan. Selective delivery plans include delivery to particular persons or addresses by use of detached address labels or cards; address lists; memorized groups of addresses; or "piggy-backed" delivery with addressed articles of merchandise, publications, or other items. Selective delivery plans do not include distributions of materials without written addresses to passersby on a particular street corner, or to all residents or randomly selected residents of an area. A message bearing the name or address of a specific person or place is a letter even if it is intended by the sender to be read or otherwise used by some person or persons other than or in addition to the addressee.

(4) Methods by which messages are recorded on tangible objects include, but are not limited to, the use of written or printed characters, drawing, holes, or orientations of magnetic particles in a manner having a predetermined significance.

(5) Whether a tangible object bears a message is to be determined on an objective basis without regard to the intended or actual use made of the object sent.

(6) Identical messages directed to more than one specific person or address or separately directed to the same person or address constitute separate letters.

(7) The following are not letters within the meaning of these regulations:[1]

(i) Telegrams.

(ii) Checks, drafts, promissory notes, bonds, other negotiable and nonnegotiable financial instruments, stock certificates, other securities, insurance policies, and title policies when shipped to, from, or between financial institutions.

(A) As used above, "checks" and "drafts" include documents intrinsically related to and regularly accompanying the movement of checks or drafts within the banking system. "Checks" do not include materials accompanying the movement of checks to financial institutions from persons who are not financial institutions, or vice versa, except such materials as would qualify under § 310.3(a) if "checks" were treated as cargo. Specifically, for example, "checks" do not include bank statements sent to depositors showing deposits, debits, and account balances.

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[1] Several of the items enumerated in this paragraph (a)(7) do not self-evidently lie outside of the definition of "letter". To the extent, however, that there is any question whether these items may properly be excluded by definition, the Postal Service has determined by adoption of these regulations that the restrictions of the Private Express Statutes are suspended pursuant to 39 U.S.C. 601(b).

(B) As used above, "financial institutions" means:

(*1*) As to checks and drafts: banks, savings banks, savings and loan institutions, credit unions, and their offices, affiliates, and facilities.

(*2*) As to other instruments: institutions performing functions involving the bulk generation, clearance, and transfer of such instruments.

(iii) Abstracts of title, mortgages and other liens, deeds, leases, releases, articles of incorporation, papers filed in lawsuits or formal quasi-judicial proceedings, and orders of courts and of quasi-judicial bodies.

(iv) Newspapers and periodicals.

(v) Books and catalogs consisting of 24 or more bound pages with at least 22 printed, and telephone directories. Separate letters of less than 24 bound and 22 printed pages bound to other material do not qualify for this exclusion. In determining whether separate letters have been bound to other material, the following factors will be considered, along with any other relevant factors: Whether the parts are visually similar; whether the parts were printed and bound together at the same time and by the same process; whether the binding serves an important purpose and has been a longstanding practice; and whether the same individual reads all parts of the bound document. Ordinarily, books and catalogs deal with matters of interest to, and are intended for, a substantial number of recipients. In addition, books generally contain a substantial number of pages. Accordingly, this exclusion will not apply when the nature of the message conveyed, the limited numbers of published copies and of recipients, the limited number of pages, or other relevant factors suggest that it is not appropriate to treat the material as a book or catalog. An item distributed privately, or privately and by mail, to fewer than 25 separate persons or places will generally not be treated as a book or catalog falling within this exclusion.

(vi) Matter sent from a printer, stationer, or similar source, to a person ordering such matter for use as his letters. This exclusion applies whether or not the printer, stationer, or similar source is owned by or affiliated with the person who orders such matter for use as his letters.

(vii) Letters sent to a records storage center exclusively for storage, letters sent exclusively for destruction, letters retrieved from a records storage center, and letters sent as part of a household or business relocation.

(viii) Tags, labels, stickers, signs or posters the type-size, layout or physical characteristics of which indicate they are primarily intended to be attached to other objects for reading.

(ix) Photographic material being sent by a person to a processor and processed photographic material being returned from the processor to the person sending the material for processing.

(x) Copy sent from a person to an independent or company-owned printer or compositor, or between printers and compositors, and proofs or printed matter returned from the printer or compositor to the office of the person who initially sent the copy.

(xi) Sound recordings, films, and packets of identical printed letters containing messages all or the overwhelming bulk of which are to be disseminated to the public. The "public" does not include individuals residing at the place of address; individuals employed by the organization doing business at the place of address (whether or not the actual place of employment is the place of address); individuals who are members of an organization, if an organization is located at the place of address; or other individuals who, individually or as members of a group, are reasonably identifiable to the sender.

(xii) Computer programs recorded on media suitable for direct input. For the conditions under which the Private Express Statutes are suspended for data processing materials, see § 320.2.

(b) "Packet" means two or more letters, identical or different, or two or more packets of letters, under one cover or otherwise bound together. As used in these regulations, unless the context otherwise requires, "letter" or "letters" includes "packet" or "packets".

(c) "Person" means an individual, corporation, association, partnership, governmental agency, or other organization or entity.

(d) "Post routes" are routes on which mail is carried by the Postal Service, and includes post roads as defined in 39 U.S.C. 5003, as follows:

(1) The waters of the United States, during the time the mail is carried thereon;

(2) Railroads or parts of railroads and air routes in operation;

(3) Canals, during the time the mail is carried thereon;

(4) Public roads, highways, and toll roads during the time the mail is carried thereon; and

(5) Letter-carrier routes established for the collection and delivery of mail.

(e) "Private carriage", "private carrier", and terms of similar import used in connection with the Private Express Statutes or these regulations mean carriage by anyone other than the Postal Service, regardless of any meaning ascribed to similar terms under other bodies of law or regulation.

(f) The "Private Express Statutes" are set forth in 18 U.S.C. 1693-1699 and 39 U.S.C. 601-606 (1970).

(g) The term "identical printed letters" includes letters that differ only in name, address or serial number.

[39 FR 33211, Sept. 16, 1974, as amended at 44 FR 52833, Sept. 11, 1979; 45 FR 3034, Jan. 16, 1980; 45 FR 59873, Sept. 11, 1980; 48 FR 42354, Sept. 27, 1982]

§ 310.2 Unlawful carriage of letters.

(a) It is generally unlawful under the Private Express Statutes for any person other than the Postal Service in any manner to send or carry a letter on a post route or in any manner to cause or assist such activity. Violation may result in injunction, fine or imprisonment or both and payment of postage lost as a result of the illeg activity (see § 310.5).

(b) Activity described in paragra (a) of this section is lawful with re spect to a letter if:

(1)(i) The letter is enclosed in an e velope or other suitable cover;

(ii) The amount of postage whic would have been charged on the lette if it had been sent through the Pos Service is paid by stamps, or posta meter stamps, on the cover or by othe methods approved by the Postal Ser ice;

(iii) The name and address of th person for whom the letter is intende appear on the cover;

(iv) The cover is so sealed that th letter cannot be taken from it witho defacing the cover;

(v) Any stamps on the cover are ca celed in ink by the sender; and

(vi) The date of the letter, or of i transmission or receipt by the carri is endorsed on the cover in ink by th sender or carrier, as appropriate; or

(2)(i) The activity is in accordan with the terms of a written agreeme between the shipper or the carrier o the letter and the Postal Service. Su an agreement may include some or a of the provisions of paragraph (b) of this section, or it may change the but it must:

(A) Adequately ensure payment o an amount equal to the postage t which the Postal Service would ha been entitled had the letters been ca ried in the mail;

(B) Remain in effect for a specifi period (subject to renewals); and

(C) Provide for periodic revie audit, and inspection.

(ii) Possible alternative arrang ments may include but are not limit to:

(A) Payment of a fixed sum at spe fied intervals based on the shippe projected shipment of letters for given period, as verified by the Pos Service; or

(B) Utilization of a computer reco to determine the volume of lette shipped during an interval and the a plicable postage to be remitted to th Postal Service.

(c) The Postal Service may suspe the operation of any part of par graph (b) of this section where th public interest requires the suspension.

(d) Activity described in paragraph (a) of this section is permitted with respect to letters which:

(1) Relate to some part of the cargo of, or to some article carried at the same time by, the conveyance carrying it (see § 310.3(a));

(2) Are sent by or addressed to the carrier (see § 310.3(b));

(3) Are conveyed or transmitted without compensation (see § 310.3(c));

(4) Are conveyed or transmitted by special messenger employed for the particular occasion only, provided that not more than twenty-five such letters are conveyed or transmitted by such special messenger (see § 310.3(d)); or

(5) Are carried prior or subsequent to mailing (see § 310.3(e)).

[39 FR 33211, Sept. 16, 1974, as amended at 45 FR 77029, Nov. 21, 1980]

§ 310.3 Exceptions.

(a) *Cargo.* The sending or carrying of letters is permissible if they accompany and relate in all substantial respects to some part of the cargo or to the ordering, shipping or delivering of the cargo.

(b) *Letters of the carrier.* (1) The sending or carrying of letters is permissible if they are sent by or addressed to the person carrying them. If the individual actually carrying the letters is not the person sending the letters or to whom the letters are addressed, then such individual must be an officer or employee of such person (see § 310.3(b)(2)) and the letters must relate to the current business of such person.

(2) The fact that the individual actually carrying the letters may be an officer or employee of the person sending the letters or to whom the letters are addressed for certain purposes does not necessarily mean that he is an officer or employee for purposes of this exception. The following factors bear on qualifications for the exception: the carrying employee is employed for a substantial time, if not fulltime (letters must not be privately carried by casual employees); the carrying employee carries no matter for other senders; the carrying employee is a regular salaried employee and shares in all privileges enjoyed by other regular employees (including employees not engaged primarily by the letter carrying function), including but not limited to salary, annual vacation time, absence allowed for illness, health benefits, workmen's compensation insurance, and retirement benefits.

(3) Separately incorporated carriers are separate entities for purposes of this exception, regardless of any subsidiary, ownership, or leasing arrangement. When, however, two concerns jointly operate an enterprise with joint employees and share directly in its revenues and expenses, either of the concerns may carry the letters of the joint enterprise.

(c) *Private hands without compensation.* The sending or carrying of letters without compensation is permitted. Compensation generally consists of a monetary payment for services rendered. Compensation may also consist, however, of non-monetary valuable consideration and of good will Thus, for example, when a business relationship exists or is sought between the carrier and its user, carriage by the carrier of the user's letter will ordinarily not fall under this exception; or, when a person is engaged in the transportation of goods or persons for hire, his carrying of letters "free of charge" for customers whom he does charge for the carriage of goods or persons does not fall under this exception.

(d) *Special messenger.* (1) The use of a special messenger employed for the particular occasion only is permissible to transmit letters if not more than twenty-five letters are involved. The permission granted under this exception is restricted to use of messenger service on an infrequent, irregular basis by the sender or addressee of the message.

(2) A special messenger is a person who, at the request of either the sender or the addressee, picks up a letter from the sender's home or place of business and carries it to the addressees home or place of business, but a messenger or carrier operating regularly between fixed points is not a special messenger.

(e) *Carriage prior or subsequent to mailing.* (1) The private carriage of letters which enter the mail stream at some point between their origin and their destination is permissible. Except as provided in paragraph (e)(3) of this section, however, the carriage of letters from a place where they have been opened, read, separated, or otherwise utilized, does not fall within this exception even though such letters had previously been in the mail stream. Similarly, the carriage of letters to a place where they will be consolidated or otherwise utilized does not fall within this exception even though they will subsequently enter the mail stream.

(2) Examples of permitted activities are the pickup and carriage of letters which are delivered to post offices for mailing; the pickup and carriage of letters at post offices for delivery to addressees; and the bulk shipment of individually addressed letters ultimately carried by the Postal Service.

(3) The private carriage of letters from branches of an organization to a location for preparation for mailing does not constitute a consolidation. The private carriage of letters from an organization's point of mail delivery to its branches in the locality does not constitute a separation.

[39 FR 33211, Sept. 16, 1974, as amended at 44 FR 52834, Sept. 11, 1979; 45 FR 59873, Sept. 11, 1980]

§ 310.4 Responsibility of carriers.

Private carriers are cautioned to make sure that their carriage of matter is lawful within the definition, exceptions, suspension, and conditions contained in this part and in Part 320 of this chapter. They should take reasonable measures to inform their customers of the contents of these regulations so that only proper matter is tendered to them for carriage. Carriers should desist from carrying any matter when the form of shipment, identity of sender or recipient, or any other information reasonably accessible to them indicates that matter tendered to them for carriage is not proper under these regulations.

§ 310.5 Payment of postage on violation.

(a) Upon discovery of activity made unlawful by the Private Express Statutes, the Postal Service may require any person or persons who engage in, cause, or assist such activity to pay an amount or amounts not exceeding the total postage to which it would have been entitled had it carried the letters between their origin and destination.

(b) The amount equal to postage will be due and payable not later than 15 days after receipt of formal demand from the Inspection Service unless an appeal is taken to the Judicial Officer Department in accordance with rules of procedure set out in Part 959 of this chapter.

(c) Refusal to pay an unappealed demand or a demand that becomes final after appeal will subject the violator to civil suit by the Postal Service to collect the amount equal to postage.

(d) The payment of amounts equal to postage on violation shall in no way limit other actions to enforce the Private Express Statutes by civil or criminal proceedings.

§ 310.6 Advisory opinions.

An advisory opinion on any question arising under this part and Part 320 of this chapter may be obtained by writing the Law Department, U.S. Postal Service, Washington, DC 20260. A numbered series of advisory opinions is available for inspection by the public in the Library of the U.S. Postal Service, and copies of individual opinions may be obtained upon payment of charges for duplicating services.

[45 FR 59873, Sept. 11, 1980]

§ 310.7 Amendment of regulations.

Amendments of the regulations in this part and in Part 320 may be made only in accordance with the rulemaking provisions of the Administrative Procedure Act.

[40 FR 23295, May 29, 1975]

PART 320—SUSPENSION OF THE PRIVATE EXPRESS STATUTES

Sec.
320.1 Definitions.
320.2 Suspension for certain data processing materials.
320.3 Operations under suspension for certain data processing materials.
320.4 Suspension for certain letters of college and university organizations.
320.5 Suspension for certain international-ocean carrier-related documents.
320.6 Suspension for extremely urgent letters.
320.7 Suspension for advertisements accompanying parcels or periodicals.
320.8 Suspension for international remailing.
320.9 Revocation or amendment of suspensions.

AUTHORITY: 39 U.S.C. 401, 404, 601-606; 18 U.S.C. 1693-1699.

§ 320.1 Definitions.

The definitions in § 310.1 apply to Part 320 as well.[1]

[39 FR 33212, Sept. 16, 1974]

§ 320.2 Suspension for certain data processing materials.

(a) The operation of 39 U.S.C. 601(a) (1) through (6) and § 310.2(b) (1) through (6) of this chapter is suspended on all post routes for data processing materials defined in paragraph (c) of this section on the terms detailed in paragraph (b) of this section, subject to the operating requirements in § 320.3.

(b) The suspension referred to in paragraph (a) of this section is for data processing materials conveyed (1) to a data processing center, if carriage is completed within 12 hours or by noon of the addressee's next business day and if data processing work is commenced on such materials within 36 hours of their receipt at the center; or (2) back from the data processing center to the address of the office originating the incoming materials, if carriage is completed within 12 hours or by noon of the addressee's next business day, and if data processing work was commenced on the incoming materials within 36 hours of their receipt at the center. For purposes of the time limitations for completion of delivery referred to in the preceding sentence, delivery of shipments between a domestic point and a foreign point shall be deemed to begin at the time materials of foreign origin are received at the international gateway city or end at the time materials of domestic origin leave the international gateway city. This suspension does not apply to carriages from or to originating offices that are neither part of the firm owning the data processing center nor data processing customers of the firm owning the data processing center.

(c) For purposes of this suspension, (1) "addressee's next business day" means the first calendar day, stated in his local time, on which he conducts business, following the calendar day of dispatch, stated in the sender's local time; (2) "data processing" means electro-mechanical or electronic processing and includes the recording of data by electro-mechanical or electronic means for further processing; and (3) "data processing materials" means materials of all types that are sent exclusively for data processing and are ready for immediate data processing, but only if they are produced recurringly in the course of the normal business operations of the office originating them or receiving them back from the processing center. The performance of clerical work which is merely preparatory and incidental to the commencement of data processing is not, for purposes of this suspension, inconsistent with the requirement that the materials be sent exclusively for data processing and be ready for immediate data processing.

[44 FR 52834, Sept. 11, 1979]

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[1] Several of the items enumerated in § 310.1(a)(7) do not self-evidently lie outside of the definition of "letter". To the extent, however, that there is any question whether these items may properly be excluded by definition, the Postal Service has determined by adoption of these regulations that the restrictions of the Private Express Statutes are suspended pursuant to 39 U.S.C. 601(b).

§ 320.3 Operations under suspension for certain data processing materials.

(a) Carriers intending to establish or alter operations based on the suspension granted pursuant to § 320.2 shall, as a condition to the right to operate under the suspension, notify the Private Express Liaison Officer, Customer Services Department, U.S. Postal Service, Washington, DC 20260, of their intention to establish such operations not later than the beginning of such operations. Such notification, on a form available from the Private Express L'aison Office, shall include information on the identity and authority of the carrier and the scope of its proposed operations.

(b) Carriers operating under the suspension granted pursuant to § 320.2 are responsible for making sure that their carriage of matter under the suspension meets all conditions contained in § 320.2. (See § 310.4.) The containers or covers of any matter carried under the suspension must be made available for examination upon request by a properly identified postal inspector. Carrier records—either in the form of notations on the containers or covers of any matter carried under the suspension granted pursuant to § 320.2 or in the form of records kept by employees of the actual times they make delivery or pickup stops—must be sufficient to show that the delivery of such matter was completed within the applicable time limitation prescribed in § 320.2. The provisions of this paragraph shall not restrict the Postal Service in the exercise of search powers conferred upon it by law.

(c) The filing of notifications under this section does not relieve the operator of responsibility for assuring that its operations conform to applicable statutes and regulations.

(d) Failure to comply with the notification requirements of this section and carriage of material or other action in violation of other provisions of this part and of Part 310 are grounds for administrative revocation of the suspension as to a particular carrier for a period of not less than one year, in a proceeding instituted by the General Counsel, following a hearing by the Judicial Officer Department in accordance with the rules of procedure set out in Part 959 of this chapter.

(NOTE: The form referred to in § 320.3 is reproduced below.)

NOTICE OF INTENT TO ESTABLISH OPERATIONS UNDER SUSPENSION OF THE PRIVATE EXPRESS STATUTES[1]

(SEE 39 CFR PART 320, SUSPENSION OF THE PRIVATE EXPRESS STATUTES)

Private Carriage of Letters

Name of Carrier ——————

Address ——————

State of Incorporation ——————

Geographical Area to Be Served ——————

1. Designate the specific markets or areas in which operations will be conducted.

2. Describe specifically any authorizations issued by local, state, or federal regulatory agencies under which operations will be conducted.

——————
(Signature of Officer)

——————
(Name and Title)

Subscribed and sworn to before me this —— day of ————, 197——.

——————
Notary Public

Seal

My commission expires ——————

(NOTE: False statements contained herein are punishable by law, 18 U.S.C. 1001.)

[39 FR 33212, Sept. 16, 1974; 39 FR 3453 Sept. 26, 1974, as amended at 40 FR 2328 May 29, 1975; 44 FR 52835, Sept. 11, 1979]

§ 320.4 Suspension for certain letters of college and university organizations.

The operation of 39 U.S.C. 601(a) (1) through (6) and § 310.2(b) (1) through (6) of this chapter is suspended on all post routes to permit colleges and universities to carry in their internal mail systems the letters of their *bona fide* student or faculty organizations to campus destinations. This suspension does not cover the letters of faculty members, students, or organizations other than *bona fide* student or faculty organizations of the carrying college or university. Colleges and universities choosing to provide their student or faculty organizations access to their internal mail systems are responsible for assuring that only letters of *bona fide* student or faculty organizations addressed to campus destinations are carried. (See § 310.4.) For purposes of this suspension, "internal mail systems" are those which carry letters on, between, and among the various campuses of a single college or university and which operate in accordance with the *Letters of the carrier* exception in 39 CFR 310.3(b).

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[1] Information relates exclusively to operations under the suspension for data processing materials. This form should be used for an initial notice of operations and for any amendments to the initial or subsequent notices.

[44 FR 52835, Sept 11, 1979]

§ 320.5 Suspension for certain international-ocean carrier-related documents.

The operation of 39 U.S.C. 601(a) (1) through (6) and § 310.2(b) (1) through (6) of this chapter is suspended on all post routes for documents, sent by a shipper or an ocean carrier from a foreign origin to a United States ocean-carrier port city destination or from a United States ocean-carrier port city origin to a foreign destination, that would be excepted under § 310.3(a) if the documents accompanied the cargo. This suspension covers only shipments to or from ports where the cargo to which the documents relate is actually loaded on, or unloaded from, an ocean vessel. For purposes of this suspension "foreign origins" or "foreign destinations" means origins or destinations outside the contiguous 48 states.

[44 FR 52835, Sept 11, 1979]

§ 320.6 Suspension for extremely urgent letters.

(a) The operation of 39 U.S.C. 601(a) (1) through (6) and § 310.2(b) (1) through (6) of this chapter is suspended on all post routes for extremely urgent letters if the conditions of either paragraph (b) or (c) of this section, and of the other paragraphs of this section, are met.

(b)(1) For letters dispatched within 50 miles of the intended destination, delivery of those dispatched by noon must be completed within 6 hours or by the close of the addressee's normal business hours that day, whichever is later, and delivery of those dispatched after noon and before midnight must be completed by 10 A.M. of the addressee's next business day. For other letters, delivery must be completed within 12 hours or by noon of the addressee's next business day. The suspension is available only if the value or usefulness of the letter would be lost or greatly diminished if it is not delivered within these time limits. For any part of a shipment of letters to qualify under this paragraph (b), each of the letters must be extremely urgent.

(2) Letters sent from the 48 contiguous states of the United States to other jurisdictions of the United States or to other nations are deemed "delivered" when they are in the custody of the international or overseas carrier at its last scheduled point of departure from the 48 contiguous states. Letters sent from other jurisdictions of the United States or from other nations into the 48 contiguous states are deemed "dispatched" when they are in the custody of the domestic carrier, having been passed by United States Customs, if applicable, at the letters' point of arrival in the 48 contiguous states.

(3) Except as provided in this paragraph (b)(3), the times and time limits specified in paragraph (b)(1) of this section are not applicable to any locations outside the 48 contiguous states. The times and time limits specified in paragraph (b)(1) of this section are applicable to letters dispatched and delivered wholly within Alaska, Hawaii, Puerto Rico or a territory or possession of the United States. The regulations provided in paragraph (b)(2) of this section relating to the delivery and dispatch of letters are applicable by analogy to letters shipped between these jurisdictions and other nations.

(c) It will be conclusively presumed that a letter is extremely urgent and is covered by the suspension if the amount paid for private carriage of the letter is at least three dollars or twice the applicable U.S. postage for First-Class Mail (including priority mail) whichever is the greater. If a single shipment consists of a number of letters that are picked up together at a single origin and delivered together to a single destination, the applicable U.S. postage may be computed for purposes of this paragraph as though the shipment constituted a single letter of the weight of the shipment. If not actually charged on a letter-by-letter or shipment-by-shipment basis, the amount paid may be computed for purposes of this paragraph on the basis of the carrier's actual charge divided by a *bona fide* estimate of the average number of letters or shipments during the period covered by the carrier's actual charge.

(d) The sender must prominently mark the outside covers or containers of letters carried under this suspension with the words "Extremely Urgent" or "Private Carriage Authorized by Postal Regulations (39 CFR 320.6)" or with a similar legend identifying the letters as carried pursuant to this suspension. In addition, each outside container or cover must show the name and address of the carrier, and the name and address of the addressee. Carrier records must be sufficient to show that the delivery of the letters was completed within the applicable time limitations, if carried under the authority of paragraph (b) of this section, and must be made available for inspection at the request of the Postal Service. The required records may be either in the form of notations on the containers or covers of any letters asserted to be carried under this suspension, or in the form of records kept by employees of the actual times they pick up and deliver such materials.

(e) Violation by a shipper or carrier of the terms of this suspension is grounds for administrative revocation of the suspension as to such shipper or carrier for a period of one year in a proceeding instituted by the General Counsel, following a hearing by the Judicial Officer Department in accordance with the rules of procedure set out in Part 959 of this chapter. The period of the revocation may be reduced or be extended for not to exceed one additional year by the Judicial Officer, depending on such mitigating or aggravating factors as the extent of the postal revenue lost because of the violation and the presence or absence of good faith error or of previous violations. The failure of a shipper or carrier to cooperate with an authorized inspection or audit conducted by the Postal Inspection Service for the purpose of determining compliance with the terms of this suspension shall be deemed to create a presumption of a violation for the purpose of this paragraph (e) and shall shift to the shipper or carrier the burden of establishing the fact of compliance. Revocation of this suspension as to a shipper or carrier shall in no way limit other actions as to such shipper or carrier to enforce the Private Express Statutes by administrative proceedings for collection of postage (see § 310.5) or by civil or criminal proceedings.

(f) The following examples illustrate the application of this suspension.

Example (1). The headquarters of a city police department each night compiles a list of the license plate numbers and descriptions of automobiles reported stolen within the metropolitan area during the previous 24 hours. This list is delivered by 7 a.m. the following day to each of the local precinct offices located throughout the city. By 9 a.m. that day, the list is circulated for use by law enforcement units operating from each office. Effective police recovery of stolen vehicles depends upon having this information handed out in written form to all units on at least a daily basis. The private carriage of these lists would qualify under the test set in paragraph (b) of this section.

Example (2). The same police department headquarters also from time to time distributes memoranda advising the local precinct officers on departmental policy and vacation schedules, and responding to inquiries from the local precinct offices. Nothing substantial turns on whether these memoranda arrive by midnight or by 10 a.m. of the next business day or whether their transmission takes a day or more longer to complete. The private carriage of these memoranda would not qualify under the test set out in paragraph (b) of this section.

Example (3). A health maintenance organization (HMO) operating its own hospital, clinics, and medical laboratory daily sends test samples and specimens from the HMO's hospital and clinics to its medical laboratory in a different location for immediate analysis. In return, the HMO laboratory sends the HMO's hospital and clinics the laboratory reports for these samples and specimens on the day the reports are completed. The reports are then promptly utilized by the hospital and clinics as part of regular diagnostic procedures. The private carriage of these reports would qualify under the of-value test set out in paragraph (b) of this section.

Example (4). The same HMO's hospital and clinics send requisitions and invoices to the HMO's central office as the need arises for the ordering of and payment for goods and services, which are handled centrally. Every other Friday, the central office sends to the hospital and clinics reports and memoranda on expenditures for personnel, supplies, utilities, and other goods and services. Nothing substantial turns on whether these materials arrive the same day or by 10 a.m. of the next business day or whether their transmission takes a day or more longer to complete. The private carriage of these materials would not qualify under the test set out in paragraph (b) of this section.

Example (5). On Sunday, Tuesday, and Thursday evenings, the central office of a regional grocery store chain sends out to its various stores in the area inventory bulletins prepared over the previous 24 hours showing the current availability and prices of meat, produce, dairy products, breadstuffs, frozen foods and similar items. Early the following afternoon, each store must send these inventory bulletins back to the central office with a notation of the store's orders to assure that the central office can ship sufficient supplies of such items for sale by the store on its next business day. The private carriage of these bulletins would qualify under the test set out in paragraph (b) of this section.

Example (6). On Sunday, Tuesday, and Thursday evenings, the central office of a different regional grocery chain sends out to its various stores in the area inventory bulletins showing the current availability and prices of meat, produce, dairy products, breadstuffs, frozen foods and similar items. Early in the afternoon of the second day following receipt of the bulletins, each store sends the bulletins back to the central office so that supplies of such items may be shipped to the store four days later. Nothing substantial turns on whether these bulletins arrive within 12 hours or by noon of the next business day or whether their transmission takes a day or more longer to complete. The private carriage of these materials would not qualify under the test set out in paragraph (b) of this section.

Example (7). The headquarters office of a large bank each business day prepares and sends to its branch offices lists showing current foreign exchange rates and similar information that must be updated and distributed to the branches on a daily basis in order for the bank to avoid the risk of serious financial loss. Within three hours of their receipt by each branch office, these lists are circulated and utilized by officials of the branch office in conducting regular banking procedures involving the use of such lists. The private carriage of these lists would qualify under the test set out in paragraph (b) of this section.

Example (8). The field office of an insurance company daily sends the insurance applications it has taken in that day to the company's central office. The applications are bound (i.e., constitute evidence of insurance) for 30 days, but may be canceled by the company. Few if any policies have been canceled by the company within 48 hours of their receipt at the central office, though the company normally begins processing the applications soon after their receipt. Nothing substantial turns on whether these bound applications arrive within 12 hours or by noon of the next business day or whether their transmission takes a day or more longer to complete. The private carriage of these materials would not qualify under the test set out in paragraph (b) of this section.

Example (9). An organization of real estate brokers in a community issues periodic bulletins containing information about properties which have been listed for sale by the constituent brokers. Each broker is entitled to show the properties to prospective buyers. In order to provide each broker with substantially equal opportunity to secure a buyer, it is necessary that the bulletins be delivered on the same day and within the shortest time span within that day. The bulletins constitute the basic source of information for the brokers and delivery in the foregoing manner is a key element in the functioning of the brokers. The private carriage of the bulletins would therefore qualify under the test set out in paragraph (b) of this section.

Example (10). The same organization distributes memoranda regarding speakers at real estate seminars, sales figures for a given period, and other information of significance and interest to real estate brokers but which does not affect their competitive positions. A failure to make simultaneous or near simultaneous delivery to the brokers, or a failure to make delivery within a specified period of time, has no material bearing upon the day-to-day operations of the brokers and private carriage of these materials would not qualify under the test set out in paragraph (b) of this section.

[44 FR 61181, Oct. 24, 1979]

§ 320.7 Suspension for advertisements accompanying parcels or periodicals.

(a) The operation of 39 U.S.C. 601(a) (1) through (6) and § 310.2(b) (1) through (6) of this chapter is suspended on all post routes for advertisements enclosed with merchandise in parcels or accompanying periodicals under the following circumstances:

(1) The advertisements must not be marked with the names or addresses of the intended recipients.

(2) The advertisements must be incidental to the shipment of the merchandise or the periodical.

(i) An advertisement is incidental to the shipment of the accompanying merchandise or the periodical when the merchandise or the periodical has been ordered by or would otherwise be sent to the recipient even without the accompanying advertisement.

(ii) Notwithstanding § 320.7(a)(2)(i), an advertisement is not incidental to the merchandise when the pertinent circumstances, such as the nominal value of the merchandise, its shipment on an unsolicited basis, or its status as a sample, reasonably indicate that the shipper's primary purpose is the conveyance of the advertisement itself and that the merchandise is merely an adjunct to the advertisement.

(b) An item is an advertisement if its primary purpose is to cause or induce the purchase of goods or services from the shipper or others.

[45 FR 59874, Sept. 11, 1980]

§ 320.8 Suspension for international remailing.

(a) The operation of 39 U.S.C. 601(a)(1) through (6) and § 310.2(b)(1) through (6) of this chapter is suspended on all post routes to permit the uninterrupted carriage of letters from a point within the United States to a foreign country for deposit in its domestic or international mails for delivery to an ultimate destination outside the United States.

Example (*1*) The letters to overseas customers of commercial firm A in Chicago are carried by Carrier B to New York where they are delivered to Carrier C for carriage to Europe. Carrier C holds the letters in its distribution center overnight, then sorts them by country of destination and merges them with letters of other firms to those countries before starting the carriage to Europe in the morning. The carriage of firm A's letters is not interrupted. The suspension for international remailing applies to the carriage by Carrier B and by Carrier C.

Example (*2*) The bills addressed to foreign customers of the Chicago branch office of commercial firm D are carried by Carrier E to New York where they are delivered to the accounting department of firm D's home office. The accounting department uses the information in the bills to prepare its reports of accounts receivable. The bills are then returned to Carrier E which carries them directly to Europe where they are entered into the mails of a foreign country. The carriage of the bills from Chicago to Europe is interrupted in New York by the delivery to firm D's home office. The suspension for international remailing does not apply to the carriage from Chicago to New York. It does apply to the subsequent carriage from New York to Europe.

(b) This suspension shall not permit the shipment or carriage of a letter or letters out of the mails to any foreign country for subsequent delivery to an address within the United States.

Example (*1*) A number of promotional letters originated by firm F in Los Angeles are carried by Carrier G to Europe for deposit in the mails of a foreign country. Some of the letters are addressed to persons in Europe, some to persons in the United States. The suspension for international remailing does not apply to the letters addressed to persons in the United States.

(c) Violation by a shipper or carrier of the terms of this suspension is grounds for administrative revocation of the suspension as to such shipper or carrier for a period of one year in a proceeding instituted by the General Counsel in accordance with Part 959 of this chapter. The failure of a shipper or carrier to cooperate with an inspection or audit authorized and conducted by the Postal Inspection Service for the purpose of determining compliance with the terms of this suspension shall be deemed to create a presumption of a violation for the purpose of this paragraph (c) and shall shift to the shipper or carrier the burden of establishing the fact of compliance. Revocation of this suspension as to a shipper or carrier shall in no way limit other actions as to such shipper or carrier to enforce the Private Express Statutes by administrative proceedings for collection of postage (see § 310.5) or by civil or criminal proceedings.

[51 FR 29638, Aug. 20, 1986]

§ 320.9 Revocation or amendment of suspensions.

These suspensions may be revoked or amended in accordance with § 310.7

No revocation of the suspension provided in § 320.2 will curtail operations of particular carriers existing at the time of the revocation to a level of operations (in dollar or volume terms, whichever is larger) lower than that antedating the revocation in a particular market served prior to the revocation. Should the suspension referred to in § 320.2 be revoked, carriers, as a condition to continuing operations under this section, will be required to provide reasonably complete and accurate data to support estimates of past operating levels in particular markets.

[44 FR 52835, Sept. 11, 1979. Redesignated at 44 FR 61181, Oct. 24, 1979]

SUBCHAPTER F—PERSONNEL

PART 447—CODE OF ETHICAL CONDUCT FOR POSTAL EMPLOYEES

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AUTHORITY: 39 U.S.C. 401; 18 U.S.C. 207(j); E.O. 11222, 30 FR 6469; 3 CFR 1965 Supp., p. 10, as amended by E.O. 11590, 36 FR 7831, 3 CFR 435 (1972; 5 CFR 735.104.

SOURCE: 39 FR 1990, Jan. 16, 1974, unless otherwise noted.

Subpart A—Basic Purpose and Applicability

§ 447.11 Basic purpose and applicability.

(a) This Code of Ethical Conduct is designed to instruct and guide employees entering the Postal Service, and to remind all employees of the conduct expected and required of them in performing their official duties and in their general conduct.

(b) Each employee, including each special Postal Service employee, is required to read and become familiar with this Code. A violation of this Code may be cause for remedial or disciplinary action, including discharge. In any instance where an employee needs guidance concerning this Code including any statute or regulation mentioned herein, he should request guidance from the appropriate Postal official as designated in § 447.31(b).

(c) Although this Code is not applicable to members of a uniformed service or to employees of another Government agency who are serving with the Postal Service, these persons are not relieved from their responsibilities under the regulations of the service or agency from which they are assigned or detailed to the Postal Service.

(d) The provisions of this Code shall be broadly construed and strictly enforced in order to prevent postal employees from securing any pecuniary advantage, however indirect, from their public employment, other than their compensation as provided by the Postal Service.

§ 447.12 Congressional code of ethics for Government service.

The standards of conduct for all employees of the United States have been stated by Congress in the Code of Ethics for Government Service. These standards properly call for the best that is in all who are in public service and should be followed by all Postal Service employees.

Code of Ethics for Government Service

Any person in Government service should:

1. Put loyalty to the highest moral principles and to country above loyalty to persons, party, or Government department.

2. Uphold the Constitution, laws, and legal regulations of the United States and of all governments therein and never be a party to their evasion.

3. Give a full day's labor for a full day's pay; giving to the performance of his duties his earnest effort and best thought.

4. Seek to find and employ more efficient and economical ways of getting tasks accomplished.

5. Never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not; and never accept, for himself or his family, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties.

6. Make no private promises of any kind binding upon the duties of office, since a Government employee has no private word which can be binding on public duty.

7. Engage in no business with the Government, either directly or indirectly, which is inconsistent with the conscientious performance of his governmental duties.

8. Never use any information coming to him confidentially in the performance of governmental duties as a means for making private profit.

9. Expose corruption wherever discovered.

10. Uphold these principles, ever conscious that public office is a public trust.

Subpart B—Standards of Conduct

§ 447.21 General.

(a) An employee shall avoid any action, whether or not specifically prohibited by this Code, which might result in or create the appearance of:

(1) Using Postal Service office for private gain;

(2) Giving preferential treatment to any person;

(3) Impeding Postal Service efficiency or economy;

(4) Losing complete independence or impartiality;

(5) Making a Postal Service decision outside official channels; or

(6) Affecting adversely the confidence of the public in the integrity of the Postal Service.

§ 447.22 Conflicts of interest—financial.

(a) *General principles.* An employee may own property and engage in financial transactions, except to the extent limited by statute, Executive order, or regulations, including this Code. Because of his employment, however, no employee may have a financial interest, direct or indirect, that conflicts substantially, or appears to conflict substantially, with his duties and responsibilities to the Postal Service.

(b) Whether a financial conflict of interest exists will often depend on the particular facts of each instance. Detailed rules cannot practically be prescribed that will cover every situation. The following rules, however, provide guidance for specific situations and illustrate the manner in which the general principles should be applied.

(1) No employee shall enter into any contract with the Postal Service or otherwise have an interest (including the ownership of stock or debt securities in a corporation which has an interest) in any contract with the Postal Service except as may be authorized by law or regulation. (For example, section 1-302.3 of the Postal Contracting Manual permits contracts between the Postal Service and its employees only under the most compelling circumstances.) This paragraph, however, does not prohibit the ownership of an interest (i) if the interest is so minor that no realistic possibility of a conflict of interest, or the appearance of a conflict of interest, exists or (ii) if the employee advises his Associate Ethical Conduct Officer of the interest, makes full disclosure of all relevant facts, and receives a written decision by the Associate Ethical Conduct Officer that the possibility of a conflict is too remote or too inconsequential to be likely to affect the integrity of his services.

(2) No employee shall solicit or accept any part of any fee or other compensation paid by any person in connection with any business dealings with, or proceedings before, the Postal Service or other agency of the Government.

(3) No employee shall act as agent or broker in procuring any bond required by the Postal Service.

(4) No employee with authority to contract for the transportation of mail, to review or give legal advice concerning these contracts, or to recommend or make decisions concerning the transportation of mail shall have any financial interest in any entity which carries, or may reasonably be expected to carry, mail.

(5) No employee with authority to recommend or make decisions, or to give legal advice, concerning the acquisition, leasing or disposal of real property shall have any interest in any entity which deals with real estate in which the Postal Service has, or may reasonably be expected to have, an interest.

(6) No employee shall lease real property to the Postal Service except for an area less than 3,000 square feet of net interior space. An existing lease of a greater amount of space may be renewed or extended if (i) the contracting officer determines that it would be in the best interests of the Postal Service and (ii) the Associate Ethical Conduct Officer for the organizational unit to which the employee is assigned is furnished a full statement of all known possible conflicts of interest and, after review thereof, concurs in the proposed extension or renewal.

(7) No employee shall participate in his official capacity in any decision or other matter in which, to his knowledge, he, or any entity by which he is or may become employed, has a financial interest unless (i) he advises his Associate Ethical Conduct Officer of the possible conflict, makes full disclosure of all relevant facts, and receives in advance a written determination by the Associate Ethical Conduct Officer that the interest is too remote or too inconsequential to be likely to affect the integrity of his services, or (ii) a general regulation published in the FEDERAL REGISTER has exempted the interest from the prohibition of this rule as being too remote or too inconsequential to affect the integrity of Government employee's services.

(c) No employee shall solicit or accept, directly or indirectly, any compensation from any source other than the Postal Service for any act or omission as an employee, or accept any salary or any contribution to or supplementation of salary as compensation for his services as an employee, from any source other than the Postal Service. This section does not prohibit:

(1) Acceptance of a lawful contribution to salary out of the treasury of a State, county, or municipality;

(2) Acceptance of contributions, awards, or other expenses under the terms of Chapter 41 of Title 5, U.S.C., relating to training of employees of the U.S. Government;

(3) Continued participation in a bona fide pension, retirement, group life, health or accident insurance, profitsharing, stock bonus, or other employee welfare or benefit plan maintained by a former employer.

(d) No employee, whether acting for personal benefit or not, shall use, or appear to use, his official position or information obtained as a result of his employment to further any private interest, whether his own or that of any other person.

(e) Unless required by his official duties to do so, no employee shall recommend or suggest the employment of any private person offering services as a consultant, agent, attorney, expeditor or the like for the purpose of assisting in any negotiations, transactions or other business with the Postal Service.

[39 FR 1990, Jan. 16, 1974, as amended at 39 FR 3677, Jan. 28, 1974]

§ 447.23 Conflict of interest—employment.

General principles. An employee may engage in outside employment and other outside activity with or without compensation, except as limited by statute, Executive order or regulations, including this Code. An employee may not engage in outside employment or other outside activity that is not compatible with the full and proper discharge of the duties and responsibilities of his Postal Service employment. Detailed rules cannot practically be prescribed that will cover every situation of incompatible employment or activity. The following rules, however, provide guidance for specific situations and illustrate the manner in which the general principles should be applied.

(a) No employee shall accept employment, compensation, payment of expense, or any other thing of monetary value under circumstances in which acceptance may result in, or create the appearance of, a conflict of interest. To this end, each employee should avoid the following:

(1) Manufacturing or representing a manufacturer of any product produced for exclusive use by the Postal Service or required by the Postal Service for use by its customers;

(2) Working for any person with whom the employee has official dealings on behalf of the Postal Service;

(3) Engaging in, or working in any capacity for a person engaged in, the business of delivering mailable matter to or from postal installations if this employment requires him to conduct business with postal employees performing postal duties of the same nature as his own postal duties at a postal installation or within the delivery area of a post office in which the employee works;

(4) Acting as consultant to any person who has a contract with the Postal Service or whom the employee has reason to believe intends to obtain, or seek to obtain, such a contract;

(5) Engaging in any sales activity, including the solicitation of business or the receipt of orders, for himself or any other person, while on duty, or in uniform, or in the office where he is stationed;

(6) Engaging in outside employment or professional practice, whether or not for pay, with or for a person whose business interests are:

(i) Substantially dependent upon, or may be significantly affected by, postal rates, fees or classifications; or

(ii) Substantially dependent on providing goods or services to or for use in connection with the Postal Service.

(b) Paragraph (a) of this section does not prohibit outside employment in which no realistic possibility of a conflict of interest, or the appearance of a conflict of interest, exists.

(c) No employee shall engage in outside employment which tends to impair his mental or physical capacity to perform his Postal Service duties and responsibilities in an acceptable manner.

(d) No employee shall engage in any activity for compensation, or accept any outside employment, or receive any salary or other thing of monetary value which is, directly or indirectly, a form of compensation from a private source for his services to the Postal Service.

(e) No employee shall engage in any outside business or activity that may reflect discredit upon the Postal Service.

(f) No employee shall use his official title, position, uniform equipment, vehicle, or authority in the endorsement or advertisement of a commercial product or service.

(g) No employee shall engage in, or work in any capacity for a person engaged in, a private business of delivering any type of mailable matter, including parcels and advertising circulars.

(h) No employee shall engage in any business or activity in which his employment in the Postal Service will or may reasonably be expected to give him an advantage over others not in the Postal Service who are engaged in a similar business or activity.

(i) Section 205 of Title 18, U.S.C., in general prohibits any officer or employee of the Postal Service from acting as agent or attorney for the prosecution of a claim against the United States or the representation of any person other than himself or a member of his immediate family in any proceeding before any court or agency of the United States, other than in the performance of his official duties. As an illustration, while an employee may engage in tax work involving Federal income or other Federal taxes if this work consists of no more than preparation of tax returns or furnishing the Internal Revenue Service with information obtained solely from the records of the taxpayer, he may not, in general, represent the position of a taxpayer before the Internal Revenue Service, or in the courts.

(j) Within the limitations imposed by this section, employees are encouraged to engage in teaching, lecturing, and writing. An employee, however, shall not, engage either on a paid or unpaid basis, in teaching, lecturing, or writing for the purpose of the special preparation of a person or class of persons for an examination of the Office of Personnel Management or Board of Examiners for the Foreign Service, or for appointment in the U.S. Postal Service, when these activities are dependent on information obtained as a result of his employment with the Postal Service, except when that information has been made available to the general public or will be made available on request, or when the Postmaster General gives written authorization that the use of nonpublic information is in the public interest. In addition, an employee shall not receive compensation or anything of monetary value for any consultation, lecture, discussion, writing, or appearance whose subject matter is devoted substantially to the responsibilities, programs, or operations of the Postal Service, or which draws substantially on official data or ideas which have not become part of the body of public information.

(k) No employee shall take sick leave to enable himself to engage in outside work.

[39 FR 1990, Jan. 16, 1974; 39 FR 3677, Jan. 28, 1974, as amended at 48 FR 48231, Oct. 18, 1983]

§ 447.24 Conflicts of interests—gifts, entertainment, and favors.

General principles. (a) No employee shall solicit or accept any gift, gratuity, favor, entertainment, meal, loan, or other thing of value from any person who:

(1) Has, or is seeking to obtain, contractual or other business or financial relations with the Postal Service;

(2) Conducts operations or activities that are regulated by the Postal Service; or

(3) Has interests that may be substantially affected by the performance or non-performance of the employee's official duties.

(b) The provisions of paragraph (a) of this section are intended to prevent a conflict of interest or the appearance of such a conflict on the part of a Postal Service employee. The conduct described in the following paragraphs (b) (1) through (7) of this section is permitted because it is considered that it will not create a conflict of interest and that its prohibition would unduly and unnecessarily restrict Postal Service employees in legitimate activities and relationships. Upon this basis, notwithstanding the provisions of paragraph (a) of this section an employee may:

(1) Accept a gift, favor, entertainment, travel or accommodation expense, loan, or other thing of value from a parent, spouse, child, brother, sister, or other member of his immediate family when the circumstances make it clear that the family relationships are the motivative factors;

(2) Accept unsolicited advertising and promotional items, such as a pen, pencil, note pad, or calendar of nominal value;

(3) Accept loans from banks or other financial institutions on terms generally available to the public, in order to finance proper and usual activities of an employee, such as a home mortgage loan;

(4) Accept and use courtesy discount cards from department stores or other organizations if these discount cards are offered to the public generally.

(5) Participate as an authorized representative of the Postal Service in a public event such as a convention or conference and accept without payment transportation or meals which are an integral part of the event or commemorative items of reasonable value which are publicly presented in the course of the event.

(6) Accept food and refreshment of nominal value on infrequent occasions in connection with inspection tours that the employee is authorized to make.

(7) Accept food and refreshments offered free in the course of a group function at which attendance has been approved in advance by an authorized executive and will assist the employee in performing his or her official duties. In approving attendance, executives shall consider whether attendance could result in, or create the appearance of, partiality or improper influence, and whether on balance the interests of the Postal Service will be

served by attendance at the function. Approval shall not be given for functions that are sponsored by a private company that has business connections with the Postal Service or in cases where the benefits are, under prudent standards, extravagant or excessive in nature. Office and regional directors, general managers/postmasters of field divisions and other executives at comparable or higher levels are authorized to approve attendance for themselves and their subordinates. Persons approving their own attendance shall notify their Associate Ethical Conduct Officer of each invitation which they accept; those persons who are Associate Ethical Conduct Officers shall notify the Ethical Conduct Officer of each invitation which they accept.

Example (1): A trade association of major mail users invites a number of managers to a reception and dinner honoring the retiring president of the association. A postal marketing manager who has received an invitation concludes that if she does not attend it may appear discourteous to the retiring president and that by attending she will have an opportunity to discuss mailing problems informally with several customers. She may properly determine that accepting the invitation will assist her in performing her duties. Because she is the Associate Ethical Conduct Officer for her Headquarters group, she should notify the General Counsel, who is the Ethical Conduct Officer, of her decision to accept. If, however, the association were at that time a party to a rate case pending decision before the Governors of the Postal Service, she should not attend.

Example (2): A contracting officer is negotiating a modification of a contract with a supplier. The supplier's representative invites the contracting officer to have dinner with him at the supplier's expense. The contracting officer's manager, the director of a procurement and material management service center, may not authorize him to accept, because the dinner is a "one-on-one" occasion, and not a group function, because—whether or not having dinner with his opposite number in the negotiations will assist the contracting officer in performing his duties relating to those negotiations—there is no reason why the contracting officer cannot pay for his own dinner, and because the dinner is too closely related in time and circumstances to a matter involving the interests of the supplier which may be affected by the performance of the contracting officer's duties. Each of these reasons by itself would prevent approval of acceptance of the invitation.

Example (3): If it had been proper for the manager in Example (2) to authorize acceptance of an invitation by the contracting officer, the manager would not have needed to notify his Associate Ethical Conduct Officer, who is the Senior Assistant Postmaster General, Facilities and Supply Group, because he was not accepting on his own behalf.

(c) When an employee travels on official business he should use commercial transportation at Government expense. With respect to inter-city travel, if there is no commercial transportation which will enable him to arrive at his destination in time for the performance of his duties, he may accept private transportation, provided the private party is reimbursed therefor at the standard commercial rate.

(d) No employee shall solicit contributions from another employee for a gift to an employee in a superior official position, make a donation as a gift to an official superior, or accept a gift from an employee receiving less pay than himself. An employee who violates this prohibition is to be removed from the Postal Service as provided by section 7351 of Title 5, U.S.C. However, this paragraph does not prohibit voluntary gifts of nominal value or donations of a nominal amount toward the purchase of a gift on a special occasion, such as marriage, illness, or retirement.

(e) An employee who believes that the limitations on the acceptance of gifts, entertainment and favors imposed by this section will interfere with the proper performance of his duties or will cause hardship or unnecessary embarrassment to himself or another person shall, if possible, make full disclosure of all relevant facts to his Associate Ethical Conduct Officer before the event and may act in accordance with the written decision of that Officer. If it is not possible to obtain an advance decision of the Associate Ethical Conduct Officer, the employee shall exercise his judgment as to the course of action which best serves the public interest and shall as soon as possible thereafter make full disclosure of the circumstances and his actions to his Associate Ethical Conduct Officer.

(f) No employee shall accept a gift, present, decoration, or any other thing from a foreign government unless authorized in accordance with section 7342 of Title 5, United States Code. See USPS Headquarters Circular 80-11 for instructions on the implementation of this statute.

(g) A gift, the receipt of which is prohibited by this Code, shall be returned to the donor with a written explanation of the reason for return. If the return of the gift is not feasible the gift shall be given to the Associate Ethical Conduct Officer with a written explanation of why the return is not feasible. The Associate Ethical Conduct Officer shall turn the gift over to a public or private charity or charitable institution and make a record of its disposition.

[39 FR 1990, Jan. 16, 1974, as amended at 48 FR 2526, Jan. 18, 1983; 48 FR 48231, Oct. 18, 1983; 52 FR 43335, Nov. 12, 1987]

§ 447.25 Other prohibited conduct.

(a) No employee while acting in his official capacity shall directly or indirectly authorize, permit, or participate in any action, event or course of conduct which subjects any person to discrimination, or results in any person being discriminated against, on the basis of race, color, religion, sex, national origin, or age.

(b) No employee shall use, directly or indirectly, or allow the use of Postal Service or other Government property or services, including property leased to the Postal Service or other Government agency, for other than officially approved activities. Each employee has a positive duty to protect and conserve Postal Service property, including equipment, supplies and other property entrusted or issued to him.

(c) No employee shall engage in criminal, dishonest, notoriously disgraceful or immoral conduct, or other conduct prejudicial to the Postal Service. Conviction of a violation of any criminal statute may be grounds for disciplinary action by the Postal Service in addition to any other penalty imposed by or pursuant to statute.

(d) No employee shall habitually use intoxicating beverages to excess. No employee shall drink beer, wine, or other intoxicating beverages while on duty. No employee shall begin work or return to duty while intoxicated. No employee shall drink intoxicating beverages in a public place while in uniform. Unless the Postmaster General specifically authorizes an exception (as in the case, for example, of an official reception) no employee shall have or bring any container of beer, wine, or other intoxicating beverage on premises occupied by a postal facility, whether or not the container has been opened.

(e) Illegal use of drugs may be grounds for removal from the Postal Service.

(f) No employee while on property owned or leased by the Postal Service or the United States or while on duty, shall participate in any gambling activity, including the operation of a gambling device, in conducting or acting as an agent for a lottery or pool, in conducting a game for money or property, or in selling or purchasing a numbers slip or ticket.

NOTE: Paragraph (f) of this section does not prohibit participation in activities specified herein if participation is necessitated by an employee's law enforcement duties, or if participation is in accordance with section 3 of Executive Order No. 10927, of March 18, 1961, relating to agency-approved solicitations.

[39 FR 1990, Jan. 16, 1974; 39 FR 3677, Jan. 29, 1974]

§ 447.26 Indebtedness.

An employee shall pay each just financial obligation in a proper and timely manner, especially one imposed by law, such as Federal, State, or local taxes. For the purpose of this section, a "just financial obligation" means one acknowledged by the employee or reduced to judgment by a court, and "in a proper and timely manner" means in a manner which the Postal Service determines does not, under the circumstances, reflect adversely on the Postal Service as his employer. In the event of dispute between an employee and an alleged creditor, the Postal Service is not required to determine the validity or amount of the disputed debt.

§ 447.27 Provisions concerning special Postal Service employees.

(a) A special employee shall not use his employment with the Postal Service for a purpose that is, or gives the appearance of being, motivated by the desire for private gain for himself or another person, particularly one with whom he has family, business or financial ties.

(b) A special employee shall not use his employment with the Postal Service to coerce, or give the appearance of coercing, a person to provide financial benefit to himself or another person, particularly one with whom he has family, business, or, financial ties.

(c) A special employee shall not use inside information obtained as a result of his Postal Service employment for private gain for himself or another person either by direct action on his part or by counsel, recommendation, or suggestion to another person, particularly one with whom he has family, business or financial ties. For the purpose of this section, "inside information" means information obtained under Postal Service or other Government authority which has not become part of the body of public information.

(d) A special employee may teach, lecture, or write in a manner consistent with § 447.23(d) as it applies to employees.

(e) A special employee, while so employed or in connection with his employment, shall not receive or solicit from a person having business with the Postal Service anything of value as a gift, gratuity, loan, entertainment or favor for himself or another person, particularly one with whom he had family, business, or financial ties. He is not prohibited, however, from accepting or receiving gifts, loans, reimbursement of expenses or other things of value under circumstances permissible for an employee in accordance with § 447.24.

Subpart C—Ethical Conduct Advisory Services and Remedial Action

§ 447.31 Advisory service.

(a) The Ethical Conduct Officer is responsible for the administration of this Code. In the exercise of that responsibility he shall coordinate the advisory service provided by this subpart, assure that authoritative interpretations of this Code are available to the Associate Ethical Conduct Officers, and render final rulings on behalf of the Postal Service in appeals by employees from interpretations of this Code made by Associate Ethical Conduct Officers. The Ethical Conduct Officer shall provide advice and guidance for the Postmaster General and all Associate Ethical Conduct Officers concerning questions arising under this Code. He may delegate to an Assistant Ethical Conduct Officer authority to perform any duty or function vested in him by this Code. The General Counsel is the Ethical Conduct Officer of the Postal Service and is the Postal Service's designee to the Office of Personnel Management on matters relating to this Code.

(b) The Deputy Postmaster General (or, in the event of a vacancy in the office of the Deputy Postmaster General, the Executive Assistant to the Postmaster General for Postal Affairs) is the Associate Ethical Conduct Officer for all employees in the Office of the Postmaster General and the Office of the Deputy Postmaster General. The Senior Assistant Postmasters General, Regional Postmasters General, heads of those departments which report directly to the Postmaster General or Deputy Postmaster General, Regional Chief Inspectors, Directors of Postal Data Centers, Directors of Automatic Data Processing Centers, and the Executive Manager of the Postal Service Training & Development Institute are Associate Ethical Conduct Officers for their respective organizational elements. An Associate Ethical Conduct Officer may with prior approval of the Ethical Conduct Officer, designate suitable employees to assist or act for him.

(c) An employee or special employee may obtain advice and guidance on questions of conflicts of interest covered by this Code from the Associate Ethical Conduct Officer having appropriate jurisdiction. In order to avoid undue interference with established grievance and disciplinary procedures, advisory service under this subpart will not normally be available in an instance in which a grievance is pending or disciplinary action has been initiated.

(d) An employee may appeal to the Ethical Conduct Officer from a ruling made by an Associate Ethical Conduct Officer concerning questions of conflicts of interest covered by this Code within 30 days from the date of the ruling. The appeal shall be in writing and shall contain a full statement of the relevant facts. It should be addressed to the Ethical Conduct Officer, U.S. Postal Service, Washington, DC 20260, and a copy thereof should be sent to the official whose ruling is being appealed.

(e) All employees and special employees shall be informed of this Code and their rights and responsibilities under it, and in particular they shall be informed of the availability of advisory services and of how and where these services are available. This information shall be provided within 90 days after approval and publication of this Code in the FEDERAL REGISTER and periodically thereafter. In the case of a new employee, this information shall be provided by the appointing officer at the time of his entrance on duty.

(f) The Ethical Conduct Officer and Associate Ethical Conduct Officers shall, upon request make Postal Service Publications 73 and 74, "Code of Ethical Conduct for Postal Employees" and "Laws Relating to Ethical Conduct and Conflict of Interest," respectively available to employees for review. This review shall not interfere with the orderly conduct of postal activities.

[39 FR 1990, Jan. 16, 1974, as amended at 48 FR 48231, Oct. 18, 1983]

§ 447.32 Remedial action.

(a) Whenever a possible conflict of interest or appearance of a conflict of interest on the part of an employee or special employee comes to the attention of the Ethical Conduct Officer, of an Associate Ethical Conduct Officer, or of a person designated to assist or act for an Associate Ethical Conduct Officer, that officer shall ascertain whether a conflict or appearance of conflict of interest exists. The employee or special employee concerned shall be provided an opportunity to explain the conflict or appearance of conflict. Whenever, after consideration of any explanation, the officer determines that remedial action is required, he shall take action or, if the employee or special employee is not under his general supervision, he shall recommend to the employee's installation head that action be taken to end the conflict or appearance of conflict of interest.

(b) Remedial action may include, but is not limited to:

(1) Disqualification for a particular assignment;

(2) Changes in assigned duties;

(3) Divestment by the employee or special employee of his conflicting interest; or

(4) Disciplinary action.

(c) Remedial or disciplinary action shall be taken in accordance with any applicable laws, Executive orders, regulations and collective bargaining agreements.

§ 447.33 Post-employment activities.

(a) Restrictions on the post-employment activities of persons who have been employed by the Postal Service are imposed by section 207 of Title 18, United States Code. In general, the restrictions contained in 207(a) permanently prohibit appearance as an agent or attorney before Federal agencies or courts in behalf of a private party in any particular matter in which the employee participated in some substantial way while a postal employee. Section 207(b) generally prohibits for two years after leaving postal employment the representation of a private party before Federal agencies or courts in any particular matter that was under the employee's official responsibility within one year prior to leaving postal employment. Section 207(c), which applies only to the Officers of the Postal Service, designated as Senior Employees, generally prohibits any appearance before or communication with the Postal Service, with an intent to influence any Postal Service action, for one year after leaving the Postal Service.

(b) Criminal sanctions of imprisonment and fines are provided for violations of section 207. The Attorney General of the United States is responsible for initiating criminal prosecution of persons believed to have violated that statute. To this end, on receipt of information regarding a possible violation of section 207, and after having determined that such information appears substantial, the Ethical Conduct Officer shall expeditiously furnish this information to the Chief Inspector who shall bring it to the attention of the Criminal Division, Department of Justice, and to the Director, Office of Government Ethics. Any investigation or administrative action conducted thereafter by the Postal Service should be coordinated with the Department of Justice to avoid prejudice to any criminal prosecution, unless the Department has determined that it does not intend to initiate such prosecution.

(c) The Postal Service may impose administrative sanctions in the case of a violation of section 207, even though criminal prosecution is not sought. Regulations governing the imposition of these sanctions, which may include prohibiting the former employee for up to five years from appearing before or communicating with the Postal Service, are contained in § 447.34 below. Rules of practice before the Judicial Officer Department in proceedings arising under these regulations are found in Part 956.

(d) Notwithstanding the prohibitions described above, section 207 permits certain types of communications. Any former postal employee may:

(1) Give testimony under oath and make statements required to be made under penalty of perjury (section 207(h));

(2) Appear before or communicate with a Federal agency or court on a matter of a personal and individual nature, such as personal income taxes or retired pay (section 207(i)); or

(3) If he receives no compensation other than established witness fees, make a statement based on his special knowledge (section 207(i)).

(e) In accordance with section 207(f), the prohibitions of section 207(a)-(c) do not apply to the making of communications by former employees solely for the purpose of furnishing scientific or technological information to the Postal Service under either of the following circumstances:

(1) The former employee shall submit to the Ethical Conduct Officer a notice in writing stating the nature of the restriction that is applicable to him and describing his participation in behalf of the Postal Service which gives rise to the restriction. He shall summarize briefly the information he wishes to communicate and shall describe the circumstances under which he intends to communicate the information. The Ethical Conduct Officer may approve the proposed communcation, either as submitted by the former employee or with such modification as he deems necessary to protect the public interest.

(2) A former employee having outstanding qualifications in a scientific, technological or other technical discipline may be exempted from the restrictions of section 207(a) through (c) if the Postmaster General, after consultation with the Director, Office of Government Ethics, makes a certification which is published in the FEDERAL REGISTER. The certification shall state that the former postal employee has outstanding qualifications in a scientific, technological or other technical discipline; that he is acting with respect to a particular matter which requires such qualifications; and that the national interest would be served by the former employee's participation.

[49 FR 40768, Oct. 17, 1984]

§ 447.34 Administrative enforcement procedures.

(a) Whenever the Ethical Conduct Officer determines that there is reasonable cause to believe that a former employee has violated section 207 (a), (b) or (c) of Title 18, United States Code, in any matter affecting the Postal Service, he may initiate an administrative disciplinary action as provided in this part.

(b) The notice shall inform the respondent of the subsection that he is alleged to have violated and of the basis for the allegation in sufficient detail to enable him to prepare an adequate defense. It shall also inform him of the disciplinary action which is proposed, of his right to a public hearing on the allegation, and of the method of requesting a hearing.

(c) A respondent may, within 20 days following the receipt of the notice of proposed disciplinary action, file an answer with the Recorder in the Postal Service's Judicial Officer Department. The answer shall be in writing and shall comply with the Rules of Practice provided in Part 956 of this title, which shall govern all subsequent proceedings in the Judicial Officer Department.

(d) If no answer is filed, the allegations of the notice shall be taken as admitted and the proposed disciplinary action shall become effective as the final agency decision. The Ethical Conduct Officer may, however, at the expiration of the period for filing an answer or any time thereafter, for good cause, mitigate or remit all or any part of a proposed disciplinary action or a sanction imposed by a final agency decision following default. If an answer is filed, the final agency decision shall be rendered pursuant to Part 956.

(e) Disciplinary action taken in accordance with a final agency decision may consist of:

(1) Prohibiting the respondent from making on behalf of any other person (except the United States) any formal or informal appearance before or, with the intent to influence, any oral or written communication to the Postal Service on any matter of business for a period not to exceed five years;

(2) Excluding the respondent from entering into any contract, lease, permit or other business arrangement with, or any subcontract involving, the Postal Service for a reasonable, specified period of time, not to exceed three years; or

(3) Such other action as may be appropriate to the violation upon which it is based.

(f) In the event that the proposed disciplinary action is that authorized by paragraph (e)(2) of this section, relating to exclusion from entering into contracts, the provisions of this section and of Part 956 shall govern to the exclusion of the provisions of, and of any rights or procedures which might otherwise be available to the respondent pursuant to, section 1, Part 6 of the Postal Contracting Manual and Part 957 of this title.

(g) A final agency decision imposing disciplinary action is subject to judicial review, as provided in 18 U.S.C. 207(j), as enacted by Pub. L. 95-521.

[49 FR 40769, Oct. 17, 1984]

Subpart D—Reports of Employment and Financial Interests

§ 447.41 Confidential statements.

(a) *Employees required to file statements.* (1) Each employee who is in one or more of the following categories (other than a special employee or one required by §447.42(a) to file a Financial Disclosure Report for Executive Branch Personnel (Standard From 278)) shall file a Confidential Statement of Employment and Financial Interests (Postal Service Form 2417):

(i) Each employee who is a member of the Postal Career Executive Service.

(ii) Each employee who is in pay grade EAS-24 or a comparable or higher pay grade whose basic duties and responsibilities require the employee to make or recommend a decision, or take or recommend official action, in regard to:

(A) Contracting or procurement. For the purpose of this section contracting or procurement includes all functions that pertain to the authorization, award, or administration of contracts with non-Postal Service entities.

(B) Auditing enterprises other than the Postal Service, including the supervision of auditors engaged in audit activities or the participation in the development of policies and procedures for performing such audits.

(C) Activities in which the decision may have an economic impact on the interests of any enterprise other than the Postal Service, including the design and maintenance of the Postal Service rate structure, the selection of carriers for the transportation of mail, the selection of sites for postal facilities, and the recommending or approval of claims of any person against the

Postal Service or any such claims by the Postal Service against any person.

(2) An employee temporarily performing the duties of a position which meets the criteria in paragraph (a)(1) of this section shall also be subject to the filing requirement in this section if he performs those duties for more than 60 calendar days.

(3) Determination as to whether an employee is in one or more of the categories set forth in paragraphs (a) (1) and (2) of this section and is therefore required to submit a Confidential Statement of Employment and Financial Interests shall be made by the employee's Associate Ethical Conduct Officer in consultation with the Ethical Conduct Officer.

(4) With the prior approval of the Office of Government Ethics, an employee in pay grade EAS-23, or a comparable or lower pay grade, who is in a position which otherwise meets the criteria of paragraph (a)(1)(ii) of this section, shall submit a Statement when it is essential to protect the integrity of the Postal Service and to avoid employee involvement in possible conflict-of-interest situations. Associate Ethical Conduct Officers may recommend to the Ethical Conduct Officer, with full justification in writing, that the approval of the Office be sought with respect to specific positions.

(5) Each special employee, regardless of the rate of compensation received, if any, shall submit a Confidential Statement of Employment and Financial Interests (For Use By Special Government Employees) (Postal Service Form 2418). The Ethical Conduct Officer, however, may waive the requirement for the submission of a statement by a special employee, other than a consultant or an expert, when he finds, either by general regulation or in a specific instance that the duties of the position held by that special employee are of a nature and are at such a level of responsibility that the submission of the statement is not necessary to protect the integrity of the Postal Service.

(6) An employee who believes that his position has been improperly included as one required to submit a statement in accordance with this subpart may obtain review of his complaint to that effect through the grievance procedure provided by collective bargaining agreement or Postal Service regulations, as applicable.

(b) *Persons to whom statements should be submitted.* (1) Employees required to submit statements who are within the jurisdiction of a District Manager shall submit their statements to the District Manager. District Managers shall review the statements, after which they will forward the statements directly to their Associate Ethical Conduct Officer with any recommendations for action in accordance with paragraph (h) of this section.

(2) Associate Ethical Conduct Officers required to submit confidential statements shall submit them to the Ethical Conduct Officer.

(3) All other employees shall submit their statements directly to their Associate Ethical Conduct Officers.

(c) *Time for submission of statements.* (1) An employee required to file a Statement shall submit that Statement no later than 30 days after he first becomes subject to the reporting requirements.

(2) Changes in, or additions to, the information contained in an employee's Statement shall be reported in a supplementary Statement, in the format prescribed by the Ethical Conduct Officer, as of June 30 each year. If no changes or additions occur, a report to that effect is required.

(3) In addition to filing the Statement required by this subpart, each employee shall, at all times, avoid acquiring a financial interest, or taking any action that could result, in a violation of the conflicts of interest provisions of this part, and in particular § 447.22(b)(7) which generally prohibits acting officially in any matter in which he or she has a personal financial interest.

(d) *Confidentiality and retention of statements.* (1) Statements and Supplementary Statements shall be held in confidence and may not be disclosed to anyone other than the Postmaster General, the Ethical Conduct Officer, the employee's Associate Ethical Conduct Officer, or their designees, without express written approval of the

Ethical Conduct Officer. The Statements and Supplementary Statements shall be retained under appropriate security by the Associate Ethical Conduct Officer except as may be otherwise directed by the Ethical Conduct Officer. When Statements are transmitted, they shall be enclosed in opaque inner and outer envelopes. The inner envelope shall be sealed and plainly marked "Restricted Information To Be Opened Only by Authorized Reviewer" and addressed to the authorized reviewer. The outer envelope shall also be sealed and addressed, but shall bear no legend indicating the contents. Employees, when transmitting their Statements and Supplementary Statements, are authorized to use this double envelope procedure.

(2) Statements and Supplementary Statements do not require that amounts be shown. An authorized reviewer, however, may require disclosure if he deems it essential to making a determination as to whether a conflict of interest, or appearance of a conflict, exists.

(3) The Statement and any Supplementary Statements submitted by an employee or special employee shall be destroyed two years after the employee leaves the Postal Service, or two years after he ceases to occupy a position for which the submission of a Statement is required, whichever is earlier.

(e) *Information not known by employees.* If any information required to be included in a Statement or Supplementary Statement, including holdings placed in trust, is not known to the employee but is known to another person, the employee shall request that other person to submit the information in his behalf, except when the trust is a blind, no-control trust, in which case a copy of the trust shall be submitted for review. Failure by the other person or trustee to furnish the needed information shall not constitute a violation by the employee of this provision if he certifies that he made a bona fide effort to have the information submitted and it was refused.

(f) *Information not required.* This section does not require an employee to submit any information relating to his connection with, or interest in, a professional society or a charitable, religious, social, fraternal, recreational, public service, civic, or political organization or a similar organization not conducted as a business enterprise. Savings accounts in credit unions, loan associations or banks, savings certificates and interests in mutual funds are not interests in "business enterprises." For the purpose of this section, educational and other institutions doing research and development or related work involving grants of money from or contracts with the Postal Service are "business enterprises" and are required to be included in an employee's statement.

(g) *Exclusions.* An employee who is otherwise required to file a statement under § 447.41(a) may be relieved of the reporting requirement if the Ethical Conduct Officer determines that:

(1) His duties are such that the likelihood of his involvement in a conflict of interest situation is remote; or

(2) The duties of the position are at such a level of responsibility that the submission of a Statement is not necessary because of the degree of supervision and review over the incumbent or the inconsequential effect of the position on the integrity of the Government.

(h) *Reviewing statements and remedial action.* Associate Ethical Conduct Officers shall review all Statements received by them whether submitted to them directly or forwarded by District Managers. Whenever the employee's Statement reveals a possible conflict of interest or appearance of a conflict of interest, appropriate action shall be taken pursuant to § 447.32.

[48 FR 2526, Jan. 20, 1983, as amended at 49 FR 40770, Oct. 17, 1984]

§ 447.42 Public financial disclosure reports.

(a) *Employees required to submit reports.* Each employee who is in one or more of the following categories shall submit a financial disclosure report as prescribed by the Director, Office of Government Ethics, (hereinafter, The Director), currently on Standard Form 278, in accordance with this section.

(1) The Postmaster General;

(2) The Deputy Postmaster General;

(3) The Ethical Conduct Officer;

(4) Each Administrative Law Judge;

(5) Each employee who occupies a position that is compensated at or above level 2 of PCES I; and

(6) Each employee not in (1) through (5) of this subsection, whose basic rate is equal to or greater than the rate of basic pay for the first step of GS-16.

(b) *Person with whom reports should be filed and time for filing.* (1) Financial disclosure reports required under this section shall be filed with the Ethical Conduct Officer. Reports are due as follows:

(i) Within 30 days of assuming a position described in paragraph (a)(1) through (5) of this section, unless the employee has, within 30 days prior to assuming that position, left another position in which he or she has filed a current report;

(ii) Within 30 days of the effective date of an increase in the rate of basic pay to the level described in paragraph (a)(6) or of an initial appointment at such a rate;

(iii) Within 30 days of the termination of employment with the Postal Service, by retirement or otherwise, unless the employee enters a similarly covered position with another agency in the Executive Branch of the Government;

(iv) On or before May 15 of each year when he or she has been in one of the categories in paragraph (a) for more than 60 days during the previous calendar year.

(2) The Ethical Conduct Officer may, for good cause shown, grant to an employee or class of employees an extension of up to 45 days. An additional extension of up to 45 days days may be granted by the Director for good cause shown. An employee requesting such an additional extension shall submit in writing a statement of specific reasons for the extension to the Ethical Conduct Officer who shall transmit the request with his comments to the Director.

(c) *Information required to be reported—reporting forms.* (1) Instructions as to the extent of the information to be provided in the report are included with the report form. More detailed instructions may be found in title 5, Code of Federal Regulations, Part 734.

(2) Each report submitted to the Ethical Conduct Officer shall be a full and complete statement, on the form prescribed by the Director and in accordance with instructions issued by him. The form currently in use is Standard Form 278.

(3) The basic categories of information to be included in the report are: Income from sources other than the Postal Service; interests in property; purchases, sales and exchanges of property; gifts and reimbursements; liabilities; positions held; and relations with other employees.

(d) *Reviewing reports and remedial action.* (1) Financial disclosure reports filed in accordance with the provisions of this section shall, within 60 days after the date of filing, be reviewed by the Ethical Conduct Officer, who shall either approve the report, or make an initial determination that a conflict or appearance thereof exists. In conducting this review, the Ethical Conduct Officer may utilize the assistance of the reporting employee's Associate Ethical Conduct Officer or his or her designee.

(2) If the reviewing official considers that additional information is needed to complete the report or to allow an adequate review to be conducted, the official shall request the reporting employee to furnish that information by a specified date. The reporting employee shall promptly comply with that request.

(3) If the reviewing official determines initially that a conflict or the appearance of a conflict exists, he shall proceed as provided in § 447.32, relating to remedial action.

(4) The Ethical Conduct Officer shall refer to the Postmaster General the name of any employee he or she has reasonable cause to believe has wrongfully failed to file a report or has falsified or wrongfully failed to report required information.

(5) The Postmaster General may take any appropriate personnel or other action in accordance with applicable law or regulations against any employee whose name is so referred.

He shall cause the Chief Inspector to refer to the Attorney General the name of any employee he has reasonable cause to believe has willfully failed to file a report or has willfully falsified or failed to report required information.

(e) *Custody of and public access to reports*—(1) *Retention of reports*. Each report filed with the Ethical Conduct Officer shall be retained by him for a period of six years. After the six-year period, the report shall be destroyed unless needed in connection with an investigation then pending.

(2) *Availability for public inspection*. Each report shall, within 15 days after it is received, be available for inspection by, or a copy of it shall be furnished to, any person who makes a written application stating:

(i) The person's name, occupation and address;

(ii) The name and address of any other person or organization on whose behalf the inspection or copy is requested; and

(iii) That the person is aware of the prohibitions on the obtaining or use of the report, as set forth in section 205(c)(1) of Pub. L. 95-521, the Ethics in Government Act.

The application shall be available to the public throughout the remainder of the period during which the report itself is available to the public. A reproduction fee of 10 cents per page shall be charged if the aggregate number of pages furnished to or for the benefit of a person or related persons exceed 30 pages.

(3) *Official position description*. A copy of the official position description of the position held by the reporting employee shall, if available, be attached by the Ethical Conduct Officer to each report. If an official position description is not available, but another form of position description is, the latter shall be attached. A copy of the position description shall be available or furnished to the public together with the report to which it pertains.

(f) *Waiver regarding certain personal gifts*. An individual seeking an exemption pursuant to subsection 202(a)(2)(D) of Pub. L. 95-521, the Ethics in Government Act (to exempt one or more gifts from aggregation under the provisions of said subsection) shall file a request with the Director which sets forth the identity and occupation of the donor; a statement that the relationship between the donor and the reporting individual is purely personal in nature; and a statement that neither donor nor any person or organization for whom the donor actually works or serves as a representative conducts business with, or is subject to regulation by, or is directly affected by action taken by the agency by which the reporting individual is employed. In the event that the immediately preceding statement cannot be made without qualification, the reporting individual may indicate such qualifications along with a statement demonstrating that he or she plays no role in any official action which might directly affect the donor or any organization for which such donor works or serves as a representative. Such a request will be made publicly available if, and at the time, it is granted.

[49 FR 40770, Oct. 17, 1984]

Subpart E—Political Activities

§ 447.51 General.

(a) Postal Service employees, except those mentioned in paragraph (b) of this section, are subject, at all times to restrictions on their participation in political activity (5 U.S.C. Subchapter III of Chapter 73, and 18 U.S.C. 602, 603, and 607), and to the regulations issued by the Office of Personnel Management relating thereto.

(b) Those Postal Service employees who are employed on an irregular or occasional basis; e.g., experts and consultants, substitute rural carriers others on a per diem basis, and without compensation or when actually employed employees, are subject to the restrictions mentioned in paragraph (a) of this section only while in an active duty status and only for the entire 24 hours of any day of actual employment. Notwithstanding this paragraph, full-time employees in a leave status and part-time employees are fully subject to the restrictions of paragraph (a) of this section.

[39 FR 1990, Jan. 16, 1974, as amended at 48 FR 48231, Oct. 18, 1983]

§ 447.52 Additional prohibited political activities.

(a) In addition to the restrictions on political activities mentioned in § 447.51, an employee may not:

(1) Display a political picture or sticker on property owned or leased by the Postal Service. He is not forbidden by this paragraph, however, from displaying a picture, including a personally autographed picture of a political figure in his office or place of work if it has no language in the nature of political campaigning;

(2) Wear a political badge or button while in uniform or while on duty when that duty requires him to deal with the public or be in the view of the public;

(3) Display a political picture or sticker on his private vehicle while that vehicle is being used for official postal purposes.

§ 447.53 Investigation and enforcement.

The Office of the Special Counsel and the Merit Systems Protection Board investigate and adjudicate allegations of political activity in violation of the regulations of the Office of Personnel Management by Postal Service employees. For jurisdiction in such a case, see 5 CFR 733.301 and Parts 1250 through 1254.

[48 FR 48231, Oct. 18, 1983]

Subpart F—Participation in Community Affairs

§ 447.61 General.

An employee is permitted to participate in community affairs to the extent consistent with the proper performance of his postal duties and with applicable laws and regulations. Nothing in this section shall prevent an employee from serving as an official of a religious or fraternal organization or of a civil nonpolitical organization which is supported by dues or contributions from its own members.

§ 447.62 Holding of State or local office by Postal Service employees.

(a) An employee may seek, accept, or hold a nonpartisan State or local office subject to the provisions of this Code and in particular this section. A "nonpartisan" office is one filled by a "nonpartisan election", which is an election at which none of the candidates are to be nominated or elected as representing a political party any of whose candidates for presidential elector received votes in the last preceding election at which presidential electors were selected.

(b) An employee who wishes to seek, accept, or hold a nonpartisan State or local office is responsible for ascertaining:

(1) Whether the office is "nonpartisan" within the definition in § 447.62(a).

(2) Whether State or local law permits a Postal Service employee to seek, accept, or hold the particular office.

(3) Whether the duties of the office would result in a conflict with his Postal Service employment.

(4) Whether the discharge of the duties of the office would interfere with the performance by the particular employee of his Postal Service duties in an acceptable manner or would interfere with the performance by other Postal Service employees of their respective duties in an acceptable manner.

(c) An employee is encouraged to seek advice from his Associate Ethical Conduct Counselor prior to taking any action to seek, accept, or hold a State or local office. If, after the employee has entered upon the discharge of the duties of this non-postal office, his non-postal duties interfere with the proper discharge of postal duties, either by him or by other postal employees, the employee holding the non-postal office shall be advised by his superior to eliminate the interference, either by resignation from the non-postal office, or in such other manner as is appropriate under the circumstances. If the employee fails, refuses, or neglects to comply with the foregoing advice and the interference continues, he will be subject to disciplinary proceedings.

(d) Employees, other than postmasters or acting postmasters in a salary level of EAS-25 or higher, may be granted permission to campaign for a full-time State or local nonpartisan office while on annual leave or on authorized leave without pay during the campaign when:

(1) The criteria in paragraphs (b) (1) and (2) of this section are met, and

(2) The Regional Postmaster General determines that the employee's postal responsibilities are being conducted in a satisfactory manner and that the absence of the employee during the campaign period will not disrupt the operation of the facility where he is employed.

Note: Requests shall be submitted through the postmaster or other installation head to the Regional Postmaster General. If the employee is elected to and takes such a full-time office, he may either be separated from the Postal Service or granted leave without pay.

(e) A postmaster or acting postmaster in salary level EAS-25 or higher shall not be authorized to take annual leave or leave without pay for the purpose of campaigning for a full-time State or local nonpartisan office.

[39 FR 1990, Jan. 16, 1974, as amended at 48 FR 48231, Oct. 18, 1983]

Subpart G—Bribery, Undue Influence, or Coercion

§ 447.71 General.

(a) An employee shall report immediately to the General Counsel, U.S. Postal Service, Washington, DC 20260:

(1) Any instance in which a person either within or outside the Postal Service uses or attempts to use a bribe, undue influence, or coercion to induce or attempt to induce the employee to act or neglect to act in regard to his official responsibilities; and

(2) Any information that causes him to believe that there has been a violation of a Federal criminal statute or any law or regulation directly or indirectly related to the responsibilities of the Postal Service. A copy of a report made under this paragraph shall also be sent by the employee to the Chief Postal Inspector, Washington, DC 20260. The report shall be sent in a sealed envelope clearly marked "Limited Official Use—To Be Opened by Addressee Only".

Subpart H—Definitions

§ 447.81 Definitions of terms used in this Code.

(a) *Postal Service.* The U.S. Postal Service as established by section 201 of Title 39, U.S.C.

(b) *Employee.* An individual appointed to a position, temporary or permanent, within the Postal Service, or hired as an executive under an employment contract, including a substitute. The term "employee" does not include the Governors of the Postal Service and members of the Postal Service Advisory Council nor, unless the context requires, a special Postal Service employee.

(c) *Associate Ethical Conduct Officers.* The persons designated in § 447.31(b) and any other persons specifically designated by the Postmaster General to assist the Ethical Conduct Officer in administering this Code.

(d) *Person.* An individual, a corporation, a company, an association, a firm, a partnership, a society, a joint stock company, or any other organization, institution or entity.

(e) *Special Postal Service Employee or Special Employee.* An individual retained, designated, appointed, or employed in the Postal Service to perform, with or without compensation, temporary duties either on a full-time or intermittent basis for not to exceed 130 days during a period of 365 consecutive days.

(f) *Official Responsibility.* Direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct Postal Service action.

(g) *Employee's Interests.* The interests of an employee and his spouse and, in addition, the interest of his minor child, or children, and other individuals related to the employee by blood who are residents of the employee's household.

(h) *Business Dealings with the Postal Service.* Any contract, work, or business, or the performance thereof, or any litigation arising out of or involving any contract, work, or business, or the sale or acquisition of any property, real or personal, or any interest in property, whose expense, price, or consideration is payable by or to the Postal Service.

(i) *This Code.* The Code of Ethical Conduct for Postal Employees which consists of the regulations of the Postal Service which are published in 39 CFR 447.11 through 447.91 inclusive.

[39 FR 1990, Jan. 16, 1974; 39 FR 4081, Feb. 1, 1974, as amended at 48 FR 48231, Oct. 18, 1983]

Subpart I—Statutory Provisions 3

The laws mentioned in this Code are listed for information only. Nothing in this Code constitutes an interpretation or construction of these laws which would bind the U.S. Postal Service or the United States. Failure to mention a statute does not excuse any person from complying with it.

§ 447.91 Statutes and regulations applicable to postal employees.

The following statutes are applicable to all employees in the Postal Service:

(a) House Concurrent Resolution 175, 85th Congress, 2nd Session, 72 Stat. B12, the "Code of Ethics for Government Service." (Quoted above at § 447.12)

(b) Prohibition against proscribed political activities (5 U.S.C. Subchapter III of Chapter 73 and 18 U.S.C. 602, 603, and 607).

(c) Prohibition against appointing or promoting a relative, or advocating such an appointment or promotion (5 U.S.C. 3110).

(d) Prohibitions against disloyalty and striking (5 U.S.C. 7311; 18 U.S.C. 1918).

(e) Chapter 11 of Title 18, U.S.C., relating to bribery, graft, and conflicts of interest.

(f) Prohibition against acting as the agent for a foreign principal registered under the Foreign Agents Registration Act (18 U.S.C. 219).

(g) Prohibition against unauthorized taking or use of documents relating to claims against or by the Government (18 U.S.C. 285).

(h) Prohibition against postal employees becoming interested in any contract for carrying the mail (18 U.S.C. 440).

(i) Prohibition against counterfeiting and forging transportation requests (18 U.S.C. 508).

(j) Prohibition against:

(1) Embezzlement of Government money or property (18 U.S.C. 641);

(2) Failing to account for public money (18 U.S.C. 643); and

(3) Embezzlement of the money or property of another person in the possession of an employee by reason of his employment (18 U.S.C. 654).

(k) Prohibitions against:

(1) Disclosure of classified information (18 U.S.C. 798), and

(2) Disclosure of confidential information (18 U.S.C. 1905).

(l) Prohibition against fraud or false statements in a Government matter (18 U.S.C. 1001).

(m) Prohibition against participation in lottery enterprises (18 U.S.C. 1303).

(n) Prohibition against Carriage of Mail contrary to law (18 U.S.C. 1693).

(o) Prohibition against Desertion of Mail (18 U.S.C. 1700).

(p) Prohibition against Obstruction of Correspondence (18 U.S.C. 1702).

(q) Prohibition against Delay or Destruction of Mail or newspapers (18 U.S.C. 1703).

(r) Prohibition against theft of mail (18 U.S.C. 1709).

(s) Prohibition against theft of newspapers (18 U.S.C. 1710).

(t) Prohibition against Misappropriation of Postal Service funds (18 U.S.C. 1711).

(u) Prohibition against falsification of postal returns (18 U.S.C. 1712).

(v) Prohibition against improper issuance of money orders (18 U.S.C. 1713).

(w) Prohibition against misuse of the franking privilege (18 U.S.C. 1719).

(x) Prohibition against sale or pledge of stamps (18 U.S.C. 1721).

(y) Prohibition against unlawful collection of postage (18 U.S.C. 1726).

(z) Prohibition against improper approval of bond or sureties (18 U.S.C. 1732).

(aa) Prohibition against lobbying with appropriated funds (18 U.S.C. 1913).

(bb) Prohibition against the use of deceit in an examination or personnel action in connection with Government employment (18 U.S.C. 1917).

(cc) Prohibition against mutilating or destroying a public record (18 U.S.C. 2071).

(dd) Prohibition against disclosure of lists of names and addresses (39 U.S.C. 412).

(ee) Prohibition against making or receiving political recommendation for appointment or promotion (39 U.S.C. 1002).

(ff) Prohibition against receipt of unauthorized fees (39 U.S.C. 1009).

(gg) Oath of office required for all postal employees (39 U.S.C. 1011).

(hh) Prohibition against opening First Class Mail (39 U.S.C. 3623).

(ii) Privacy Act of 1974 (5 U.S.C. 552a).

NOTE: In addition to these statutes, Executive Order No. 11222 of May 8, 1965, as made applicable to the Postal Service by Executive Order No. 11590 of April 23, 1971, prescribes standards of ethical conduct for officers and employees of the Government.

[39 FR 1990, Jan. 16, 1974, as amended at 40 FR 45726, Oct. 2, 1975; 48 FR 48231, Oct. 18, 1983]

SUBCHAPTER G [RESERVED]

SUBCHAPTER H—PROCUREMENT SYSTEM FOR THE U.S. POSTAL SERVICE: INTELLECTUAL PROPERTY RIGHTS OTHER THAN PATENTS

PART 601—PROCUREMENT OF PROPERTY AND SERVICES

Sec.
601.100 Procurement Manual; incorporation by reference.
601.101 Effective date.
601.102 Applicability and coverage.
601.103 Content of Procurement Manual.
601.104 Availability of Procurement Manual.
601.105 Amendments to the Procurement Manual.

AUTHORITY: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 410, 411, 2008, 5001-5605.

SOURCE: 53 FR 24267, June 28, 1988, unless otherwise noted.

§ 601.100 Procurement Manual; incorporation by reference.

Section 552(a) of Title 5, U.S.C., relating to public information requirements of the Administrative Procedure Act, provides in pertinent part that "* * * matter reasonably published in the FEDERAL REGISTER when incorporated by reference therein with the approval of the Director of the Federal Register." In conformity with that provision, with 39 U.S.C. section 410(b)(1), and as provided in this part, the U.S. Postal Service hereby incorporates by reference its Procurement Manual (PM), Publication 41, a loseleaf publication.

§ 601.101 Effective date.

The provisions of the Procurement Manual are applicable, effective June 1, 1988, with respect to all covered procurement activities of the Postal Service. However, the Procurement Manual is being implemented on the following phased basis: Headquarters Office of Procurement and Office of Design and Construction Management—June 1, 1988; Mail Processing Department—July 1, 1988; Procurement and Material Management Service Centers and Service Offices, U.S. Postal Service Field Divisions, Facilities Service Centers and Facilities Service Offices—August 1, 1988. During the implementation phase procurement actions will be accomplished in accordance with policies prescribed either in the Postal Contracting Manual or the Procurement Manual, depending upon the implementation schedule established for an individual procurement entity.

§ 601.102 Applicability and coverage.

(a) The Procurement Manual applies to all Postal Service procurements of property and services.

(b) When fully effective, the Procurement Manual supersedes the Postal Contracting Manual.

§ 601.103 Content of Procurement Manual.

The Procurement Manual consists of 12 chapters and 6 appendices, as follows:

(a) Chapter 1—Authority, Responsibility, and Policy—covers general procurement policies, including the delegation of procurement authority and responsibility.

(b) Chapter 2—Procurement Planning—establishes requirements and procedures for advance procurement planning including source selection plans, and policies regarding specifications and statements of work.

(c) Chapter 3—Sources—covers sources of supplies and services and their priority, including Postal Service sources, other Government agencies, and commercial sources. It establishes requirements for publicizing procurements and covers matters regarding contractor qualifications.

(d) Chapter 4—Purchasing Methods—covers competitive purchasing procedures, including solicitation, evaluation of proposals, price negotiation, and contractor selection. It includes simplified procedures for purchases below certain dollar ceilings and establishes limitations on noncompetitive purchasing. It sets forth rules for filing and considering protests against Postal Service contracting procedures and awards.

(e) Chapter 5—Contract Pricing—describes the types of contracts authorized for Postal Service use and the circumstances for their use. It establishes policies and procedures for price evaluation, including price analysis, cost analysis, and principles for determining the allowability of costs.

(f) Chapter 6—Contract Administration—Describes responsibilities and procedures for the administration of Postal Service contracts, and for their modification and termination.

(g) Chapter 7—Bonds, Insurance, and Taxes—sets forth policies and procedures governing bonds and insurance under contracts, and discusses the applicability of Federal, State, and local taxes.

(h) Chapter 8—Special Categories of Contracts—covers various types of contracts subject to special procedures and describes the authorities of officials authorized to issue policy and procedural directives supplementing the Procurement Manual.

(i) Chapter 9—Patents and Data Rights—covers the acquisition of patents, copyrights, and other rights in data.

(j) Chapter 10—Socioeconomic policies—contains procedures for contracting with minority-owned businesses, and policies carrying out the requirements of certain statutes, including the Contract Work Hours and Safety Standards Act, the Davis-Bacon Act, and the Service Contract Act. It establishes Postal Service policy and preference regarding purchase of domestic-source products and services.

(k) Chapter 11—Facilities and Related Services—covers the specialized procedures involved in the procurement of construction, the acquisition of real property, and leases.

(l) Chapter 12—Mail Transportation—prescribes policies and procedures for the procurement of mail transportation and directly related ancillary services by contract.

(m) Appendix A—Solicitations—prescribes the forms, format, and provisions to be used in preparing solicitations, and the establishment and maintenance of solicitation mailing lists. It contains all solicitation provisions prescribed in the Manual.

(n) Appendix B—Contract Clauses—prescribes certain clauses not prescribed elsewhere in the Manual and contains all clauses prescribed in the Manual.

(o) Appendix C—Forms and formats—states that the forms and computer generated formats necessary to implement and supplement the manual are in the Procurement Handbook, the Facilities Design and Construction Handbook, the Mail Transportation Procurement Handbook, and other publications and directives referenced in the Manual or in these handbooks.

(p) Appendix D—Rules of Practice in Proceedings Relative to Debarment and Suspension from Contracting—contains a reprint of the rules of practice issued by the Judicial Officer as 39 CFR Part 957.

(q) Appendix E—Rules of Practice Before the Postal Service Board of Contract Appeals—contains a reprint of the rules of practice issued as 39 CFR Part 955.

(r) Appendix F—Procurement Manual Index—is an alphabetical index of important words and terms used in the Manual.

§ 601.104 Availability of Procurement Manual.

(a) Copies of the Procurement Manual, Publication 41, may be purchased, and changes to the Manual may be obtained, from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402-9325. The Manual may be examined during normal business hours at the U.S. Postal Service Library, 475 L'Enfant Plaza West SW., Washington, DC 20260-1641, and at the following Postal Service Procurement and Materiel Management Service Centers:

Central Region, 433 West Van Buren St., Chicago, IL 60699-6260.
Eastern Region, 1845 Walnut St. Philadelphia, PA 19197-6260.
Northeast Region, 8 Griffin Road North, Windsor, CT 06006-6260.
Southern Region, 1407 Union Ave. Memphis, TN 38166-6260.

Western Region, 850 Cherry Ave., San Bruno, CA 94099-6260.

(b) A copy of the Procurement Manual is on file with the Director, Office of the Federal Register, National Archives and Records Administration, 1100 "L" Street NW., Room 8401, Washington, DC 20408-0001.

§ 601.105 Amendments to the Procurement Manual.

Notice of changes made in the Procurement Manual will be periodically published in the FEDERAL REGISTER. The text of such changes will be filed with the Director, Office of the Federal Register. Subscribers to the Basic Manual will receive from time to time the amendments from the Postal Service in the form of Procurement Manual Circulars or in Postal Bulletin notices. These amendments will be cumulated in a periodic Transmittal Letter which subscribers will receive from the Government Printing Office.

AMENDMENTS TO PROCUREMENT MANUAL

Transmittal letter	Dated	Federal Register publication
2	June 1, 1988	53 FR 24265
3	December 1, 1989	54 FR 48243

[53 FR 24267, June 28, 1988, as amended at 54 FR 48243, Nov. 22, 1989]

PART 602—INTELLECTUAL PROPERTY RIGHTS OTHER THAN PATENTS

Sec.
602.1 General principles.
602.2 Intellectual Property Rights Board.
602.3 Requests for use.

AUTHORITY: 39 U.S.C. 401(5).

SOURCE: 43 FR 42250, Sept. 20, 1978, unless otherwise noted.

§ 602.1 General principles.

It is the policy of the Postal Service to secure full ownership rights for its intellectual properties other than patents (hereinafter, intellectual properties) having significant economic or other business value, except when to do so would be contrary to the best interest of the Postal Service. Intellectual property rights shall be acquired and managed so as to:

(a) Promote the economic, operational, and competitive well-being of the Postal Service;

(b) Limit restrictions on the use of Postal Service intellectual property to a minimum consistent with its statutory obligations;

(c) Assure that all potential users are treated fairly;

(d) Give due regard to other relevant considerations.

§ 602.2 Intellectual Property Rights Board.

In accordance with the foregoing policy, the Postal Service Intellectual Property Rights Board, with the approval of the Assistant Postmaster General, Procurement and Supply Department, formulates the program for the management of the Postal Service's rights in intellectual property. It identifies intellectual properties in which the Postal Service should secure its rights. It receives and makes recommendations for the disposition of applications for use of Postal Service intellectual property. It periodically reviews the intellectual property rights portfolio to determine the extent of the utilization of protected properties and recommends relinquishment of ownership when it considers ownership no longer desirable. It is advised by the Office of Contracts of performance under license agreements and makes recommendations for corrective measures when necessary. In consultation with the Law Department, it recommends appropriate action against unauthorized use of intellectual property.

§ 602.3 Requests for use.

(a) Requests for the use of intellectual property shall be addressed to:

Chairman, Intellectual Property Rights Board, Office of Contracts, U.S. Postal Service, Washington, DC 20260.

Requests should be accompanied by sufficient information concerning the requester and the use requested to allow reasoned consideration by the Board.

(b) Each request shall be considered in a timely fashion by the Board in accordance with the policy established herein. Requests favorably considered by the Board shall be submitted to the Assistant Postmaster General, Procurement and Supply Department, for approval.

(c) Approved requests contemplating a permissive (no fee) use of the intellectual property will be evidenced by a letter of permission furnished the requester on behalf of the Board.

(d) Approved requests contemplating a contractual (fee) use of the intellectual property shall be forwarded to the Office of Contracts, Procurement and Supply Department, for the negotiation of a satisfactory license agreement.

(e) Each license agreement shall be subject to legal review.

(f) Requesters shall be promptly advised of requests which are not approved.

SUBCHAPTER I [RESERVED]

SUBCHAPTER J—POSTAL SERVICE DEBT OBLIGATIONS; DISBURSEMENT POSTAL MONEY ORDERS

PART 760—APPLICABILITY OF TREASURY DEPARTMENT REGULATIONS

§ 760.1 Treasury Department regulations; applicability to Postal Service.

The provisions of Treasury Department Circular No. 300, 31 CFR Part 306 (other than Subpart O), as amended from time to time, shall apply insofar as appropriate to obligations of the U.S. Postal Service to the extent they are consistent with the Trust Indenture of the Postal Service and the agreement between the Postal Service and the Federal Reserve Bank of New York acting as Fiscal Agent of the United States on behalf of the Postal Service. Definitions and terms used in Treasury Department Circular 300 should be read as though modified to effectuate the application of the regulations to the U.S. Postal Service.

(39 U.S.C. Secs. 401, 402, 2005)

[37 FR 211, Jan. 7, 1972]

PART 761—BOOK-ENTRY PROCEDURES

Sec.
761.1 Definition of terms.
761.2 Authority of Reserve Banks.
761.3 Scope and effect of book-entry procedure.
761.4 Transfer or pledge.
761.5 Withdrawal of Postal Service securities.
761.6 Delivery of Postal Service securities.
761.7 Registered bonds and notes.
761.8 Servicing book-entry Postal Service securities; payment of interest, payment at maturity or upon call.

AUTHORITY: 39 U.S.C. 401, 402, 2005.

SOURCE: 37 FR 16801, Aug. 19, 1972, unless otherwise noted.

§ 761.1 Definition of terms.

In this part, unless the context otherwise requires or indicates:

(a) "Reserve Bank" means the Federal Reserve Bank of New York (and any other Federal Reserve Bank which agrees to issue Postal Service securities in book-entry form) as fiscal agent of the United States acting on behalf of the Postal Service and when indicated acting in its individual capacity.

(b) "Postal Service security" means any obligation of the Postal Service issued under 39 U.S.C. 2005, in the form of a definitive Postal Service security or a book-entry Postal Service security.

(c) "Definitive Postal Service security" means a Postal Service security in engraved or printed form.

(d) "Book-entry Postal Service security" means a Postal Service security in the form of an entry made as prescribed in these regulations on the records of a Reserve Bank.

(e) "Pledge" includes a pledge of, or any other security interest in, Postal Service securities as collateral for loans or advances or to secure deposits of public moneys or the performance of an obligation.

(f) "Date of call" is the date fixed in the authorizing resolution of the Board of Governors of the Postal Service on which the obligor will make payment of the security before maturity in accordance with its terms.

(g) "Member bank" means any national bank, State bank, or bank or trust company which is a member of a Reserve bank.

§ 761.2 Authority of Reserve Banks.

Each Reserve Bank is hereby authorized, in accordance with the provisions of this part, to (a) issue book-entry Postal Service securities by means of entries on its records which shall include the name of the depositor, the amount, the loan title (or series) and maturity date; (b) effect conversions between book-entry Postal Service securities and definitive Postal Service securities; (c) otherwise service and maintain book-entry Postal Service securities; and (d) issue a confirmation of transaction in the form of a written advice (serially numbered or otherwise) which specifies the amount and description of any securities; that is, loan title (or series) and maturity date, sold or transferred, and the date of the transaction.

§ 761.3 Scope and effect of book-entry procedure.

(a) A Reserve Bank as fiscal agent of the United States acting on behalf of the Postal Service may apply the book-entry procedure provided for in this part to any Postal Service securities which have been or are hereafter deposited for any purpose in accounts with it in its individual capacity under terms and conditions which indicate that the Reserve Bank will continue to maintain such deposit accounts in its individual capacity, notwithstanding application of the book-entry procedure to such securities. This paragraph is applicable, but not limited, to securities deposited:

(1) As collateral pledged to a Reserve Bank (in its individual capacity) for advances by it;

(2) By a member bank for its sole account;

(3) By a member bank held for the account of its customers;

(4) In connection with deposits in a member bank of funds of States, municipalities, or other political subdivisions; or,

(5) In connection with the performance of an obligation or duty under Federal, State, municipal, or local law, or judgments or decrees of courts.

The application of the book-entry procedure under this paragraph shall not derogate from or adversely affect the relationships that would otherwise exist between a Reserve Bank in its individual capacity and its depositors concerning any deposits under this paragraph. Whenever the book-entry procedure is applied to such Postal Service securities, the Reserve Bank is authorized to take all action necessary in respect of the book-entry procedure to enable such Reserve Bank in its individual capacity to perform its obligations as depository with respect to such Postal Service securities.

(b) A Reserve Bank as fiscal agent of the United States acting on behalf of the Postal Service may apply the book-entry procedure to Postal Service securities deposited as collateral pledged to the United States under Treasury Department Circulars Nos. 92 and 176, both as revised and amended, and may apply the book-entry procedure, with the approval of the Secretary of the Treasury, to any other Postal Service securities deposited with a Reserve Bank as fiscal agent of the United States.

(c) Any person having an interest in Postal Service securities which are deposited with a Reserve Bank (in either its individual capacity or as fiscal agent of the United States) for any purpose shall be deemed to have consented to their conversion to book-entry Postal Service securities pursuant to the provisions of this part, and in the manner and under the procedures prescribed by the Reserve Bank.

(d) No deposits shall be accepted under this section on or after the date of maturity or call of the securities.

§ 761.4 Transfer or pledge.

(a) A transfer or pledge of book-entry Postal Service securities to a Reserve bank (in its individual capacity or as fiscal agent of the United States) or to the United States, or to any transferee or pledgee eligible to maintain an appropriate book-entry account in its name with a Reserve bank under this part, is effected and perfected, notwithstanding any provision of law to the contrary, by a Reserve bank making an appropriate entry in its records of the securities transferred or pledged. The making of such an entry in the records of a Reserve bank shall (1) have the effect of a delivery in bearer form of definitive Postal Service securities; (2) have the effect of a taking of delivery by the transferee or pledgee; (3) constitute the transferee or pledgee a holder; and (4) if a pledge, effect a perfected security interest therein in favor of the pledgee. A transfer or pledge of book-entry Postal Service securities effected under this paragraph shall have priority over any transfer, pledge, or other interest, theretofore or thereafter effected or perfected under paragraph (b) of this section or in any other manner.

(b) A transfer or a pledge of transferable Postal Service securities, or any interest therein, which is maintained by a Reserve bank (in its individual capacity or as fiscal agent of the United States) in a book-entry account under this part, including securities in book-entry form under § 761.3(a)(3), is effected, and a pledge is perfected, by any means that would be effective under applicable law to effect a transfer or to effect and perfect a pledge of the Postal Service securities, or any interest therein, if the securities were maintained by the Reserve bank in bearer definitive form. For purposes of transfer or pledge hereunder, book-entry Postal Service securities maintained by a Reserve bank shall, notwithstanding any provision of law to the contrary, be deemed to be maintained in bearer definitive form. A Reserve bank maintaining book-entry Postal Service securities either in its individual capacity or as fiscal agent of the United States is not a bailee for purposes of notification of pledges of those securities under this paragraph, or a third person in possession for purposes of acknowledgment of transfers thereof under this paragraph. Where transferable Postal Service securities are recorded on the books of a depositary (a bank, banking institution, financial firm, or similar party, which regularly accepts in the course of its business Postal Service securities as a custodial service for customers, and maintains accounts in the names of such customers reflecting ownership of or interest in such securities) for account of the pledgor or transferor thereof and such securities are on deposit with a Reserve bank in a book-entry account hereunder, such depositary shall, for purposes of perfecting a pledge of such securities or effecting delivery of such securities to a purchaser under applicable provisions of law, be the bailee to which notification of the pledge of the securities may be given or the third person in possession from which acknowledgment of the holding of the securities for the purchaser may be obtained. A Reserve bank will not accept notice or advice of a transfer or pledge effected or perfected under this paragraph, and any such notice or advice shall have no effect. A Reserve bank may continue to deal with its depositor in accordance with the provisions of this part, notwithstanding any transfer or pledge effected or perfected under this paragraph.

(c) No filing or recording with a public recording office or officer shall be necessary or effective with respect to any transfer or pledge of book-entry Postal Service securities or any interest therein.

(d) A Reserve Bank shall, upon receipt of appropriate instructions, convert book-entry Postal Service securities into definitive Postal Service securities and deliver them in accordance with such instructions; no such conversion shall effect existing interests in such Postal Service securities.

(e) A transfer of book-entry Postal Service securities within a Reserve Bank shall be made in accordance with procedures established by the Bank not inconsistent with this part.

(f) All requests for transfer or withdrawal must be made prior to the maturity or date of call of the securities.

[37 FR 16801, Aug. 19, 1972, as amended at 38 FR 12919, May 17, 1973]

§ 761.5 Withdrawal of Postal Service securities.

(a) A depositor of book-entry Postal Service securities may withdraw them from a Reserve Bank by requesting delivery of like definitive Postal Service securities to itself or on its order to a transferee.

(b) Postal Service securities which are actually to be delivered upon withdrawal may be issued either in registered or in bearer form.

§ 761.6 Delivery of Postal Service securities.

A Reserve Bank which has received Postal Service securities and effected pledges, made entries regarding them, or transferred or delivered them according to the instructions of its depositor is not liable for conversion or for participation in breach of fiduciary duty even though the depositor had no right to dispose of or take other action in respect of the securities. A Reserve Bank shall be fully discharged of its obligations under this part by the delivery of Postal Service securities in definitive form to its depositor or upon the order of such depositor. Customers of a member bank or other depositary (other than a Reserve Bank) may obtain Postal Service securities in definitive form only by causing the depositor of the Reserve Bank to order the withdrawal thereof from the Reserve Bank.

§ 761.7 Registered bonds and notes.

No formal assignment shall be required for the conversion to book-entry Postal Service securities of registered Postal Service securities held by a Reserve Bank (in either its individual capacity or as fiscal agent of the United States) on the effective date of this part for any purpose specified in § 761.3(a). Registered Postal Service securities deposited thereafter with a Reserve Bank for any purpose specified in § 761.3 shall be assigned for conversion to book-entry Postal Service securities. The assignment, which shall be executed in accordance with the provisions of Part 760 of this subchapter and Subpart F of 31 CFR Part 306, so far as applicable, shall be to "Federal Reserve Bank of ———— as fiscal agent of the United States acting on behalf of the Postal Service for conversion to book-entry Postal Service securities."

§ 761.8 Servicing book-entry Postal Service securities; payment of interest, payment at maturity or upon call.

Interest becoming due on book-entry Postal Service securities shall be charged in the Postal Service Fund on the interest due date and remitted or credited in accordance with the depositor's instructions. Such securities shall be redeemed and charged in the Postal Service Fund on the date of maturity, call or advance refunding, and the redemption proceeds, principal and interest, shall be disposed of in accordance with the depositor's instructions.

PART 762—DISBURSEMENT POSTAL MONEY ORDERS

Subpart A—General, Definitions, Issuance

Sec.

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762.41 Advice of non-receipt or loss, destruction, or mutilation.
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762.44 Receipt or recovery of original disbursement postal money order.
762.45 Removal of stoppage of payment.

AUTHORITY: 39 U.S.C. 401(2), 401(3), 401(4), 401(10), and 404(6).

SOURCE: 40 FR 52371, Nov. 10, 1975, unless otherwise noted.

Subpart A—General, Definitions, Issuance

§ 762.11 General.

The Postal Service, at its discretion issues a specialized postal money order, designated a Disbursement

Postal Money Order in payment of Postal Service obligations. Disbursement Postal Money Orders are distinguishable on their face from other postal money orders in the following ways:

(a) Disbursement Postal Money Orders have words of negotiability—"Pay to the order of"—printed on their face, while other postal money orders simply bear the words "Pay to" on their face;

(b) Disbursement Postal Money Orders, unlike other postal money orders, bear on their face the phrase, "This special money order is drawn by the Postal Service to pay one of its own obligations."; and

(c) The amounts of Disbursement Postal Money Orders are printed in words as well as numbers, while the amounts of postal money orders available at post offices are printed in numbers only.

§ 762.12 Definitions.

As used in Part 762 of this chapter, the term:

(a) "Disbursement Postal Money Order" means a money order (described in Part 762) issued by the Postal Service to pay one of its own obligations.

(b) "Federal Reserve Bank" means a Federal Reserve Bank or branch thereof.

(c) "Financial organization" means any bank, savings bank, savings and loan association or similar institution, or Federal or State chartered credit union.

(d) "Person" or "persons" means an individual or individuals, or an organization or organizations, whether incorporated or not, including all forms of banking institutions.

(e) "Presenting Bank" means a bank or other depositor of a Federal Reserve Bank which presents Disbursement Postal Money Orders to and receives credit therefor from a Federal Reserve Bank.

(f) "Reclamation" means the action taken by the Postal Service to obtain refund of the amounts of paid Disbursement Postal Money Orders.

(g) "Postal Service" means the U.S. Postal Service.

§ 762.13 Issuance.

Disbursement Postal Money Orders are issued solely by Postal Data Centers and solely for the purpose of paying Postal Service obligations. Accordingly, Disbursement Postal Money Orders may be issued in lieu of U.S. Treasury checks.

§ 762.14 Amounts for which disbursement postal money orders may be issued.

Disbursement Postal Money Orders may be issued for any amount appropriate to pay Postal Service Obligations. There is no maximum amount above which a Disbursement Postal Money Order may not be issued.

§ 762.15 Postal Service payments not made by disbursement postal money order.

Postal Service payments not made by Disbursement Postal Money Order are made by cash, U.S. Treasury Check, or by regular postal money order, and may be made by electronic funds transfer.

Subpart B—Endorsements, Payment, Guaranties, Warranties and Processing of Disbursement Postal Money Orders

§ 762.21 Scope.

The regulations in this subpart prescribe the requirements for endorsement and the conditions for payment of Disbursement Postal Money Orders drawn by the Postal Service.

§ 762.22 Definitions.

For definitions applicable to this subpart see § 762.12 of this chapter.

§ 762.23 General rules.

All Disbursement Postal Money Orders drawn by the Postal Service are payable without limitation of time. The Postal Service shall have the usual right of a drawee to examine Disbursement Postal Money Orders presented for payment and refuse payment of any Disbursement Postal Money Orders, and shall have a reasonable time to make such examination. Disbursement Postal Money Orders shall be deemed to be paid by the Postal Service only after first examination has been fully completed. If the Postal Service is on notice of a doubtful question of law or fact when a Disbursement Postal Money Order is presented for payment, payment will be deferred pending settlement by the Postal Service.

§ 762.24 Guaranty of endorsements.

The presenting bank and the endorsers of a Disbursement Postal Money Order presented to the Postal Service for payment shall be deemed to guarantee to the Postal Service that all prior endorsements are genuine, whether or not an express guaranty is placed on the Disbursement Postal Money Order. When the first endorsement has been made by one other than the payee personally, the presenting bank and the endorsers shall be deemed to guarantee to the Postal Service, in addition to other warranties, that the person who so endorsed had unqualified capacity and authority to endorse the Disbursement Postal Money Order on behalf of the payee.

§ 762.25 Reclamation of amounts of paid disbursement postal money orders.

The Postal Service shall have the right to demand refund from the presenting bank of the amount of a paid Disbursement Postal Money Order if after payment the Disbursement Postal Money Order is found to bear a forged or unauthorized endorsement, or an endorsement by another for a deceased payee where the right to the proceeds of such Disbursement Postal Money Orders terminated upon the death of the payee, or to contain any other material defect or alteration which was not discovered upon first examination. If refund is not made, the Postal Service shall take such action against the proper parties as may be necessary to protect its interests.

§ 762.26 Postal facilities not to cash disbursement postal money orders.

Post offices and other postal facilities shall not be expected to cash Disbursement Postal Money Orders or to return cash for endorsed Disbursement Postal Money Orders offered in payment for postal service in amounts less than the value of a Disbursement Postal Money Order. However, properly endorsed Disbursement Postal Money Orders may be accepted as total or partial payment for postal services.

§ 762.27 Processing of disbursement postal money orders by Federal Reserve Banks.

In accordance with an agreement between the Postal Service and the Federal Reserve Banks as depositaries and fiscal agents of the United States, Federal Reserve Banks will handle Disbursement Postal Money Orders as follows:

(a) Federal Reserve Banks shall not be expected to cash Disbursement Postal Money Orders presented directly to them for payment; and

(b) Each Federal Reserve Bank shall:

(1) Receive Disbursement Postal Money Orders from its member banks and its other depositors which guarantee all prior endorsements thereon;

(2) Give immediate credit therefor in accordance with its current Time Schedules and charge the amount thereof to the general account of the U.S. Treasury, subject to examination and payment by the Postal Service; and

(3) Forward the Disbursement Postal Money Orders to the Postal Service.

§ 762.28 Release of original disbursement postal money orders.

An original Disbursement Postal Money Order may be released to a responsible endorser only upon receipt of a properly authorized request showing the reason it is required.

§ 762.29 Endorsement of disbursement postal money orders by payees.

(a) *General requirements.* Disbursement Postal Money Orders shall be endorsed by the payee or the payees named, or by another on behalf of such payee or payees as set forth in this Subpart B. The forms of endorsement shall conform to those recognized by general principles of law and commercial usage for the negotiation transfer, or collection of negotiable instruments.

(b) *Endorsement of disbursement postal money orders by a financial organization under the payee's authorization.* When a Disbursement Postal Money Order is credited by a financial organization to the payee's account under his authorization, the financial organization may use an endorsement substantially as follows:

Credit to the account of the within-named payee in accordance with payee's or payees' instructions. Absence of endorsement guaranteed.

A financial organization using this form of endorsement shall be deemed to guarantee to all subsequent endorsers and to the Postal Service that it is acting as an attorney in fact for the payee or payees, under his or their authorization.

(c) *Endorsement of disbursement postal money orders drawn in favor of financial organizations.* All Disbursement Postal Money Orders drawn in favor of financial organizations, for credit to the accounts of persons designating payment so to be made, shall be endorsed in the name of the financial organization as payee in the usual manner.

§ 762.30 Disbursement postal money orders issued to incompetent payees.

(a) If the Disbursement Postal Money Order is endorsed by a legal guardian or other fiduciary and presented for payment by a bank it will be paid by the Postal Service without submission to the Postal Service of documentary proof of authority of the guardian or other fiduciary.

(b) If a guardian has not been or will not be appointed, the Disbursement Postal Money Order shall be forwarded to the Money Order Division, Postal Data Center, P.O. Box 14963, St. Louis, MO 63182, with a full explanation of the circumstances.

§ 762.31 Disbursement postal money orders issued to deceased payees.

(a) If the Disbursement Postal Money Order is endorsed by an Executor or Administrator and presented for payment by a bank it will be paid by the Postal Service without submission to the Postal Service of documentary proof of the authority of the Executor or Administrator.

(b) If an Executor or Administrator has not been appointed or if there is doubt as to whether the proceeds of the Disbursement Postal Money Order pass to the estate of the deceased payee, the instrument should be returned to the Money Order Division, Postal Data Center, P.O. Box 14963, St. Louis, MO 63182, for determination whether, under applicable laws, payment is due, and for reissuance to the appropriate payee.

Subpart C—Issuance of Substitutes for Lost, Destroyed, Mutilated, and Defaced Disbursement Postal Money Orders

§ 762.41 Advice of non-receipt or loss, destruction, or mutilation.

(a) In the event of the non-receipt, loss, or destruction of a Disbursement Postal Money Order, or the mutilation or defacement of a Disbursement Postal Money Order to an extent which renders it non-negotiable, the owner should immediately contact the Money Order Division, Postal Data Center, P.O. Box 14963, St. Louis, MO 63182, describing the Disbursement Postal Money Order, stating the purpose for which it was issued, giving, if possible, its date, number, and amount, and requesting that payment be stopped. In cases involving mutilated or defaced Disbursement Postal Money Orders the owner should enclose the mutilated or defaced item with his communication.

(b) If the Disbursement Postal Money Order, which is the basis of the owner's claim, is determined to be outstanding, the Money Order Division shall furnish the claimant an appropriate application form for obtaining a substitute Disbursement Postal Money Order. However, the execution of an application shall not be required in the event the original written statement submitted by the claimant substantially meets the requirements of the prescribed application form.

§ 762.42 Request for substitute disbursement postal money orders; requirements for undertaking of indemnity.

In the case of a request for a substitute Disbursement Postal Money Order:

(a) An undertaking of indemnity in penal sum equal to the amount of the Disbursement Postal Money Order shall, unless otherwise provided in this section, be executed by the claimant, as may be required by the Postal Service, and submitted to the Money Order Division.

(b) Unless the Postal Service determines that an undertaking of indemnity is essential in the public interest, no undertaking of indemnity shall be required in the following classes of cases:

(1) If the Postal Service is satisfied that the loss, theft, destruction, mutilation or defacement occurred without fault of the owner or holder, and while the Disbursement Postal Money Order was in the custody or control of the Postal Service;

(2) If substantially the entire Disbursement Postal Money Order is presented and surrendered by the owner or holder and the Postal Service is satisfied as to the identity of the Disbursement Postal Money Order presented and that any missing portions are not sufficient to form the basis of a valid claim against the Postal Service;

(3) If the Postal Service is satisfied that the original Disbursement Postal Money Order is not negotiable and cannot be made the basis of a valid claim against the Postal Service; or

(4) If the amount of the Disbursement Postal Money Order is not more than $200.

§ 762.43 Issuance of substitute disbursement postal money order.

Upon approval of the undertaking o indemnity, application, or statemen of claim, the Money Order Divisio shall issue to the claimant a substitu Disbursement Postal Money Orde showing such information as may b necessary to identify the original i strument.

§ 762.44 Receipt or recovery of origin disbursement postal money order.

(a) If the original Disbursemen Postal Money Order is received or re covered by the owner after he has re quested the Postal Service to stop pay ment on the original but before a su stitute has been received, he shoul immediately advise the Money Orde Division and hold such original Di bursement Postal Money Order unt receipt of instructions with respect t its negotiability.

(b) If the original Disburseme Postal Money Order is received by th owner after a substitute has been re ceived by him, the original shall not b cashed, but shall be immediately fo warded to the Money Order Divisio Under no circumstances shall both th original and substitute be cashed.

§ 762.45 Removal of stoppage of payme

Requests for removal of stoppage o payment shall be addressed to th Money Order Division. No request fo removal of stoppage of payment sha be accepted after issuance of a subs tute Disbursement Postal Mone Order has been approved.

SUBCHAPTER K—SPECIAL REGULATIONS

PART 775—ENVIRONMENTAL PROCEDURES

Sec.
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AUTHORITY: 39 U.S.C. 401; 42 U.S.C.4331 *et seq.*; 40 CFR 1500.4(p).

SOURCE: 44 FR 63525, Nov. 5, 1979, unless otherwise noted.

§ 775.1 Purpose.

These procedures implement the National Environmental Policy Act (NEPA) Regulations (43 FR 55978) issued by the Council on Environmental Quality (CEQ). These procedures are adopted pursuant to the Postal Reorganization Act rather than the NEPA insofar as the NEPA and its Regulations do not apply to the Postal Service under 39 U.S.C. 410(a).

§ 775.2 Policy.

It is the policy of the Postal Service to:

(a) Interpret and administer applicable policies, regulations, and public laws of the United States in accordance with the policies set forth in the National Environmental Policy Act, as amended, and the NEPA Regulations.

(b) Make the NEPA process useful to Postal Service decision makers and the public.

(c) Emphasize environmental issues and alternatives in the consideration of proposed actions.

(d) Encourage and facilitate public involvement in decisions which affect the quality of the human environment.

(e) Use the NEPA process to identify and assess reasonable alternatives to proposed actions in order to avoid or minimize adverse effects on the environment.

(f) Use all practicable means to protect, restore, and enhance the quality of the human environment.

(g) Reduce paperwork.

(h) Reduce delay.

§ 775.3 Responsibilities.

(a) The Assistant Postmaster General, Real Estate and Buildings Department, is responsible for overall review of NEPA compliance. Requests for information or status reports on environmental impact statements and other elements of the NEPA process should be addressed to:

Assistant Postmaster General, Real Estate & Buildings Department, U.S. Postal Service, 475 L'Enfant Plaza, West, SW., Washington, DC 20260.

(b) Heads of affected Headquarters Departments and Regional Postmasters General must designate "Environmental Coordinators" to be specifically responsible for compliance with these procedures.

§ 775.4 Typical classes of action.

(a) *Normally assessed kinds of action.* These procedures apply to the following typical classes of actions:

(1) Those which normally require environmental impact statements: None.

(2) Those which do not normally require environmental impact statements, but do normally require environmental assessment except as excluded by paragraph (b) of this section:

(i) Postal facility actions:

(A) New construction, including lease-construction.

(B) The purchase or lease of an existing building if a new or substantially enlarged occupancy is involved.

(C) The expansion or improvement of an existing facility.

(ii) Real property disposals.

(iii) Postal facility function changes.

(iv) Initiation of legislative proposals.

(b) Categorical exclusions. The classes of action in paragraphs (b)(1) through (b)(15) of this section normally do not require either an environmental assessment or an environmental impact statement. However, the responsible official must be alert to unusual conditions that would require an environmental assessment or an environmental impact statement notwithstanding the applicability of a categorical exclusion to particular action.

(1) New construction, Postal Service owned, including site acquisition by any method, or Postal Service leased, of less than 30,000 net interior square feet.

(2) Acquisition by purchase, lease, or exchange, of existing buildings containing less than 50,000 net interior square feet with occupancy of greater than 90 days where planned postal uses do not differ significantly from past uses of the site.

(3) Lease of existing buildings of any size for occupancy of 90 days or less.

(4) Expansion or improvement of an existing facility where the expansion does not exceed 30,000 net interior square feet.

(5) Acquisition of unimproved real property not connected to specific facility plans or when necessary to protect the interests of the Postal Service in advance of final project approval. This categorical exclusion applies only to the acquisition. Any subsequent use of the property for a facility project must be considered under this part without regard to ownership of the real property.

(6) Routine actions normally conducted to protect and maintain properties and which do not alter the configuration of the building.

(7) Repair to, or replacement-in-kind of, building equipment or components (e.g., electrical distribution, HVAC systems, doors, windows, roofs, etc.).

(8) Obtaining, granting, disposing, or changing of easements, licenses and permits, rights-of-way and similar interests.

(9) Disposal through sale or outlease of unimproved real property of any size or improved real estate under 30,000 net interior square feet.

(10) Purchase of Postal Service occupied leased property where planned postal uses do not differ significantly from past uses of the site.

(11) Extension, renewal, renegotiation, or termination of existing lease agreements.

(12) Joint development and/or joint-use projects involving construction under 30,000 net interior square feet.

(13) Procurement or disposal of motor vehicles not involving a substantial increase in the concentration of vehicles in a geographic impact area. Procurement or disposal of mail handling equipment.

(14) Postal rate or mail classification actions.

(15) Postal facility function changes not involving construction, the relocation of a substantial number of employees, or a substantial increase in the number of motor vehicles at a facility.

[44 FR 63525, Nov. 5, 1979, as amended at 47 FR 5716, Feb. 8, 1982; 49 FR 23181, June 1, 1984; 55 FR 10454, Mar. 21, 1990]

§ 775.5 Environmental evaluation guidelines.

(a) *Approach.* When dealing with proposals which may have an impact on the human environment, environmental coordinators, planners, decision makers, and other officials responsible for actions, will, as appropriate:

(1) Use a systematic approach that integrates natural and social sciences and environmental design in planning and making decisions.

(2) Identify environmental effects and values in detail, and appraise them in conjunction with economic and technical analyses.

(3) Consider environmental documents at all decision points at which other planning documents are considered. (Plans and decisions are to reflect environmental values. Proposed actions should be assessed as soon as their effects can be meaningfully evaluated, to provide the bases for early decision on whether detailed environmental impact statements must be prepared.)

(4) Study, develop, describe, and evaluate at all decision points, reasonable alternatives to recommended actions which may have a significant effect on the environment.

(b) *Proposal requirements.* When an environmental impact statement has been prepared, it must accompany the proposal through and be used in the decision-making process. Any other proposal must refer to applicable environmental documents (e.g., determination of categorical exclusion; finding of no significant impact; notice of intent to prepare an impact statement), and relevant comments and responses.

(c) *Lead agency arrangements.* If the Postal Service and another Federal agency become involved in a lead agency arrangement for the preparation of an environmental impact statement, the Service will cooperate fully.

§ 775.6 Environmental evaluation process.

(a) *All actions*—(1) *Assessment of actions.* An environmental assessment must be made of each proposed action, except that an assessment need not be made if a written determination is made that:

(i) The action is one of a class listed in § 775.4(b), Categorical Exclusions, and

(ii) The action is not affected by extraordinary circumstances which may cause it to have a significant environmental effect. This part of the determination may be supported by completion of an environmental checklist (referred to as a level I environmental review in the Handbook RE-6) for certain types of categorical exclusions.

(2) *Findings of no significant impact.* If an environmental assessment indicates that there is no significant impact of a proposed action on the environment, an environmental impact statement is not required. A "finding of no significant impact" is prepared and published in accordance with § 775.10. When the proposed action is approved, it may be accomplished without further environmental consideration. A "finding of no significant impact" document briefly presents the reasons why an action will not have a significant effect on the human environment and states that an environmental impact statement will not be prepared. It must refer to the environmental assessment and any other environmentally pertinent documents related to it. The assessment may be included in the finding if it is short, in which case the discussion in the assessment need not be repeated in the finding.

(3) *Impact statement preparation decision and notices.* If an environmental assessment indicates that a proposed major action would have a significant impact on the environment, a notice of intent to prepare an impact statement is published (see § 775.10) and an environmental impact statement is prepared.

(4) *Role of impact statement in decision making.* An environmental impact statement is used, with other analyses and materials, to decide which alternative should be pursued, or whether a proposed action should be abandoned or other courses of action pursued. See § 775.9 for restrictions on the timing of this decision.

(5) *Record of decision.* For actions requiring environmental impact statements, a concise public record of decision is prepared when a decision, or a proposal for legislation, is made. The record, which may be integrated into any other record, or notice, including that required by Postal Serivce regulations and procedures governing intergovernmental review of Postal Service facility project actions, must:

(i) State what the decision was.

(ii) Identify all alternatives considered in reaching a decision, specifying alternatives considered to be environmentally preferable; identify and discuss all significant factors, including any essential considerations of national policy, which were weighed in making the decision and state how those considerations entered into the decision.

(iii) State whether all practicable means to avoid or minimize environmental harm from the alternative selected have been or will be adopted, and if not, why not.

(6) *Actions prohibited prior to issuance of record of decision.* Until a record of decision is issued, no action may be taken on a proposal on which an environmental impact statement is made if the action would:

(i) Have an adverse environmental impact, or

(ii) Limit the choice of reasonable alternatives.

(7) *Mitigation measures.* Practicable mitigation measures identified in an environmental assessment must be implemented. Mitigation measures described in an environmental impact statement and accepted in a decision must be implemented. Upon request, the Postal Service informs federal, state, and local agencies and the public of the progress in carrying out adopted mitigation measures.

(b) *Additional requirements for facility actions.* (1) The environmental assessment of any action which involves the choice of contending sites for a facility must be started early in the planning of the action. An environmental assessment report, however, is not required until the contending project sites have been determined. The information contained in the environmental assessment report must be used, together with other site planning information, in the selection of the final site.

(2) When an environmental assessment indicates that an environmental impact statement may be needed for a proposed facility action, a decision analysis report reflecting the results of the assessment is presented to the Capital Investment Committee, and to the Board of Governors if the Board considers the proposal (see 39 CFR 3.4(f)), so that they may decide if an impact statement is to be prepared.

(3) If the Committee or the Board is requested to authorize the preparation of an environmental impact statement, and an analysis indicates that it would be more cost-effective to proceed immediately with continued control of sites, (including advance acquisition, if necessary, and where authorized by postal procedures), environmental impact statement preparation, and project designs, the request will include authorization of funds to permit:

(i) The preparation of an impact statement encompassing all reasonable site alternatives,

(ii) The continued control of specified competing sites (including advance acquisition, if necessary, and where authorized by postal procedures), chosen to preserve environmental or other options, and

(iii) The development of limited designs of facilities for each competing site.

(4) A completed environmental impact statement will be presented to the Capital Investment Committee, and to the Board of Governors if the Board considers the proposal, for use in deciding whether a proposed project should proceed, be restudied, or be abandoned. If the decision is to proceed with a proposed project, the Committee, or the Board if it considers the proposal, decides which alternative site is to be used for project development, and authorizes the project.

[44 FR 63525, Nov. 5, 1979, as amended at 48 FR 29378, June 24, 1983; 50 FR 32411, Aug. 12, 1985; 50 FR 33036, Aug. 16, 1985; 55 FR 10454, Mar. 21, 1990]

§ 775.7 Environmental assessments.

(a) An environmental assessment must contain:

(1) A summary of major considerations and conclusions,

(2) A description of the proposed action,

(3) For each reasonable alternative, a description of the affected environment, the environmental consequences, the mitigation measures, if any, and a comparison to all alternatives considered.

(b) Those preparing an environmental assessment must solicit information and views from Federal, State and local agencies and, where there is a substantial likelihood of significant effects on the environment, the public. All responsible views and information must be considered.

§ 775.8 Environmental impact statements.

(a) *Determining scope.* Before an environmental impact statement is prepared, the following procedures must be followed to determine what issues are to be addressed and in what depth:

(1) Affected Federal, State, and local agencies and other interested persons are invited to participate by furnishing written views and information, or at a hearing if appropriate. Notice is given in accordance with § 775.10.

(2) The significance of issues to be analyzed in depth in the environmen

tal impact statement is determined through consideration of:

(i) Actions which are closely related, or similar, or have cumulative significant impacts.

(ii) Alternatives, which must include the "no action" alternative, other reasonable courses of action, and mitigation measures.

(iii) Impacts, which may be direct, indirect, or cumulative.

(3) Issues which are not significant are identified and eliminated.

(4) The determinations made must be revised if substantial changes are made later in the proposed action, or if significant new circumstances or information arise which bear on the proposal or its impacts.

(b) *Preparation.* (1) Except for proposals for legislation, environmental impact statements are prepared in two stages:

(i) Draft environmental impact statement, prepared in accordance with the scope decided upon under paragraph (a) of this section.

(ii) Final environmental impact statement, responding to comments on the draft statement and discussing and responding to any responsible opposing view which was not adequately discussed in the draft statement.

(2) Environmental impact statements must:

(i) Be analytic rather than encyclopedic.

(ii) Contain discussions of impacts in proportion to their significance. Insignificant impacts eliminated during the process under § 775.8(a) to determine the scope of issues must be discussed only to the extent necessary to state why they will not be significant.

(iii) Be concise, and not longer than is necessary to comply with NEPA. They must not contain repeated statements of the same basic points.

(iv) Contain discussions of alternatives considered and of how alternatives chosen will meet the requirements of NEPA and other environmental laws and policies.

(v) Encompass the range of alternatives to be considered by the decision makers.

(vi) Serve to assess the environmental impact of proposed actions, rather than to justify decisions already made.

(3) The text of final environmental impact statements normally should be less than 150 pages. Statements on proposals of unusual scope or complexity normally should be less than 300 pages.

(4) Staged or "tiered" environmental impact statements must not contain repetitive discussions of the same issues. Each document must state where each earlier document is available.

(5) Material may be incorporated into an environmental impact statement by reference only when the material is reasonably available for inspection by potentially interested persons within the time allowed for comment.

(6) If information relevant to reasonably foreseeable adverse impacts cannot be obtained because the overall cost of obtaining it is exorbitant or the means to obtain it are not known, the fact that such information is incomplete or unavailable must be stated clearly. In addition, the relevance of the incomplete or unavailable information to the evaluation of the impacts must be stated, and a summary of existing credible scientific evidence relevant to evaluation of the impacts must be included, as well as an evaluation of such impacts on the basis of theoretical approaches or generally accepted research methods. For purposes of this subsection, "reasonably foreseeable" includes impacts which have catastrophic consequences, even if their probability of occurrence is low, provided that the analysis of the impacts is supported by credible scientific evidence, is not based on pure conjecture, and is within the rule of reason.

(7) If a cost-benefit analysis relevant to the choice among environmentally different alternatives was prepared for the proposed action, it must be incorporated by reference or appended to the statement to aid in evaluating the environmental consequences. The relationship between the cost-benefit analysis and any analysis of unquantified environmental impacts, values, and amenities must be discussed.

(8) Methods used must be identified, and footnote references must be made to scientific and other sources relied

on for conclusions. Analytical techniques may be incorporated in appendices.

(9) Permits, licenses, and other authorizations needed to implement a proposal must be listed in the draft environmental impact statement and the prospects for obtaining them must be assessed. Where there is uncertainty as to the need for an authorization it must be indicated.

(10) An environmental impact statement must contain a discussion of any inconsistency between the proposed action and any State or local law, ordinance, or approved plan; and must contain a description of the manner and extent to which the proposed action will be reconciled with the law, ordinance, or approved plan.

(11) Where State laws or local ordinances impose environmental impact statement requirements which are not in conflict with those in NEPA, an environmental impact statement made by the Postal Service should satisfy pertinent State and local requirements to the extent practicable.

(c) *Format.* The standard format for environmental statements is:

(1) *Cover Sheet.* The cover sheet, not to exceed one page, must include:

(i) A list of the responsible agencies including the lead agency and any cooperating agencies.

(ii) The title of the proposed action that is the subject of the statement (and if appropriate, the titles of related cooperating agency actions), together with any city, state, and county where the action is to take place.

(iii) The name, address, and telephone number of a person at the agency who can supply further information.

(iv) A designation of the document as a draft or final statement or a draft or final supplement.

(v) A one-paragraph abstract of the statement.

(vi) The date by which comments must be received.

(2) *Summary.* The summary must stress the major conclusions, areas of controversy (including issues raised by agencies and the public), and the issues to be resolved (including the choice among alternatives).

(3) *Table of Contents.*

(4) *Purpose of and Need for Action.*

(5) *Alternatives and Mitigation.* This portion of the environmental impact statement is vitally important. Based on the analysis in the Affected Environment and Environmental Consequences section (see § 775.8(c) (6)), the environmental impacts and the alternatives are presented in comparative form, thus sharply defining the issues and providing a clear basis for choosing alternatives. Those preparing the statement must:

(i) Explore and evaluate all reasonable alternatives, including the "no action" alternative, and briefly discuss the reasons for eliminating any alternatives.

(ii) Devote substantial treatment to each alternative considered in detail, including the proposed action, so that reviewers may evaluate their comparative merits.

(iii) Identify the preferred alternative or alternatives in the draft and final statements.

(iv) Describe appropriate mitigation measures not considered to be an integral part of the proposed action or alternatives. See § 775.6(a)(7).

(6) *Affected Environment and Environmental Consequences.* For each reasonable alternative, each affected element of the environment must be described, followed immediately by an analysis of the impacts (environmental consequences). The analysis must include, among others, the following:

(i) Any adverse environmental effects which cannot be avoided should the action be implemented.

(ii) The relationship between short-term uses of the environment and the maintenance and enhancement of long-term productivity,

(iii) Any irreversible or irretrievable commitments of resources should the action be implemented, and

(iv) Energy requirements and conservation; and natural, or depletable, resource requirements and conservation.

(7) *List of Mitigation Measures.*

(8) *List of Preparers.* List the names, together with the qualifications (expertise, professional disciplines), of persons who were primarily responsible for preparing the environmental impact statement or significant background papers.

(9) *List of Agencies, Organizations and Persons to Whom Copies of the Statement Are Sent.*

(10) *Index.*

(11) *Appendices.* Include comments on draft statement in final statement.

(d) *Distribution.* (1) Any completed draft environmental impact statement which is made the subject of a public hearing, must be made available to the public as provided in § 775.10 of this part at least 15 days in advance of the hearing.

(2) Draft and final environmental impact statements must be filed with the Environmental Protection Agency. Five copies are filed with EPA's headquarters addressed to the Office of Federal Activities (A-104), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; five copies are also filed with the responsible EPA region. Statements may not be filed with the EPA earlier than they are transmitted to commenting agencies and made available to the public.

(3) Copies of draft and final environmental impact statements must be furnished to:

(i) Any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved.

(ii) Any appropriate Federal, state, or local agency authorized to develop and enforce environmental standards.

(iii) The appropriate review officials identified in the Postal Service regulations and procedures governing intergovernmental review of Postal Service facility project actions, the State Historic Preservation Officer, and, when National Register or eligible properties may be affected, the Advisory Council on Historic Preservation.

(iv) Any person, organization or agency requesting them.

(4) Copies of final environmental impact statements must be furnished to any person who, or organization or agency which, submitted substantive comments on the draft.

(e) *Responses to comments.* (1) A final statement responds to comments on a draft statement in one or more of the following ways:

(i) Modification of alternatives, including the proposed action.

(ii) Development and evaluation of alternatives not previously given serious consideration.

(iii) Supplementation, improvement, or modification of analyses.

(iv) Correction of facts.

(v) Explanation of why a comment does not warrant a direct response, citing supporting sources, authorities, or reasons. Relevant circumstances which may trigger reappraisal or further response must be indicated.

(2) Substantive comments received on a draft statement must be attached to the final statement.

(3) If all of the changes are minor and are confined to responses described in paragraphs (e)(1) (iv) and (v) of this section, errata sheets may be written, and only the comments and errata sheets need be recirculated. In such a case, the draft statement with the comments, errata sheets, and a new cover, must be filed as the final statement.

(f) *Supplements.* (1) A supplement to a draft or final environmental impact statement must be issued if:

(i) Substantial changes are made in the proposed action that are relevant to environmental concerns; or

(ii) Significant new circumstances or information bearing on environmental impacts of the proposed action arise or are discovered.

(2) The decision on a proposed action involving an environmental impact statement, must be delayed until any necessary supplement has been circulated and has gone through the commenting period. A supplement is prepared, circulated, and filed in the same manner (except for determining scope) as draft and final statements, unless alternative procedures are approved by CEQ.

(g) *Contracting.* A contractor employed to prepare an environmental impact statement must certify that it has no financial or other interest in the outcome of the project.

(h) *Proposals for Legislation.* Legislative environmental impact statements must be prepared and transmitted as follows:

(1) A legislative environmental impact statement is considered part of the formal transmittal of a legislative proposal to the Congress. It may be

transmitted to the Congress up to 30 days after the proposal. The statement must be available in time for Congressional hearings and deliberations.

(2) Preparation and processing of a legislative statement must conform to the requirements for impact statements, except as follows:

(i) It is not necessary to determine the scope of issues.

(ii) A draft is considered to be a final statement. Both draft and final statements are needed only when:

(A) A Congressional committee with jurisdiction over the proposal has a rule requiring both.

(B) Both are specifically required by statute for proposals of the type being submitted.

(3) Comments received on a legislative statement, and the Postal Service's responses, must be forwarded to the Congress.

[44 FR 63525, Nov. 5, 1979, as amended at 48 FR 29378, June 24, 1983; 55 FR 10455; Mar. 21, 1990]

§ 775.9 Time frames for environmental impact statement actions.

(a) Each week the EPA publishes in the FEDERAL REGISTER a notice of the draft and final environmental impact statements received in that office during the preceding week. The minimum time periods for decision on an action, specified in paragraphs (b) through (d) of this section, are calculated from the date of publication of an EPA notice of receipt of the relevant impact statement.

(b) A decision on a proposed action may not be made or recorded until the later of the following dates: 90 days after publication of the notice described in paragraph (a) of this section for a draft statement or 30 days after publication of the notice for a final statement.

(c) If a final statement is filed with the EPA within 90 days after a draft statement is filed, the 30 day period and the 90 day period may run concurrently.

(d) A minimum of 45 days must be allowed for comments on draft statements.

§ 775.10 Public notice and information.

(a) Public notice is given of NEPA-related hearings, intent to undertake environmental assessments and environmental impact statements, and the availability of environmental documents (that is, environmental assessments, findings of no significant impact, and environmental impact statements), as follows:

(1) Notices must be mailed to those who have requested them.

(2) Notices concerning a proposal of national concern must be mailed to national organizations reasonably expected to be interested. Any such notice must be published in the FEDERAL REGISTER. (See paragraph (a)(4) of this section.

(3) Notices of any proposed action having effects primarily of local concern are given as follows:

(i) Any such notice, including a copy of any pertinent environmental document, must be mailed to the appropriate review officials identified in the Postal Service regulations and procedures governing intergovernmental review of Postal Service facility project actions, to the State Historic Preservation Officer, and to local public officials.

(ii) Any such notice must be published in one or more local newspapers.

(iii) Any such notice must be posted on and near any proposed and alternate sites for an action.

(iv) Any such notice may be mailed to potentially interested community organizations, including small business associations.

(v) Any such notice may be mailed to owners and occupants of nearby or affected property.

(4) A copy of every notice of intent to prepare an environmental impact statement must be furnished to the Assistant General Counsel, Legislative Division, Law Department, who will have it published in the FEDERAL REGISTER.

(b) All notices must give the name, address, and telephone number of a postal official who may be contacted for information. Environmental documents are made available to the public on request. Inspection, copying, and the furnishing of copies will be in accordance with 39 CFR Part 265, "Release of Information."

[44 FR 63525, Nov. 5, 1979, as amended at 47 FR 19992, May 10, 1982; 48 FR 29378, June 24, 1983]

§ 775.11 Hearings.

(a) Public hearings must be held whenever there is:

(1) Substantial environmental controversy concerning a proposed action and a request for a hearing by any responsible individual or organization;

(2) A request for a hearing by an agency with jurisdiction over or special expertise concerning the proposed action; or

(3) A reasonable expectation that a hearing will produce significant information not likely to be obtained without a hearing.

(b) The distribution and notice requirements of §§ 775.8(d)(1) and 775.10 must be complied with whenever a hearing is to be held.

PART 776—FLOOD PLAIN MANAGEMENT AND PROTECTION OF WETLANDS PROCEDURES

Sec.

776.1 Purpose and policy.
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AUTHORITY: 39 U.S.C. 401.

SOURCE: 46 FR 22366, Apr. 17, 1981, unless otherwise noted.

§ 776.1 Purpose and policy.

(a) Executive Order 11988, Floodplain Management, was issued on May 24, 1977, under authority of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321, et seq.) (NEPA), the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001), and the Flood Disaster Protection Act of 1973 (Pub. L. 93-234, 87 Stat. 9451). Executive Order 11990, Protection of Wetlands, was issued on May 24, 1977, under authority of NEPA. The purpose of these Orders was to avoid adverse impacts associated with the occupancy and/or modification of floodplains; or the modification and destruction of wetlands.

(b) These procedures implement Executive Orders 11988 and 11990 and are adopted under the Postal Reorganization Act rather than the statutes listed in paragraph (a) of this section, to the extent these statutes do not apply to the Postal Service under 39 U.S.C. 410(a).

(c) These procedures provide guidance:

(1) To avoid direct or indirect, long or short term adverse impact on floodplains and wetlands;

(2) To reduce the risk of flood loss;

(3) To minimize the impact of floods on human safety, health, and welfare;

(4) To restore and preserve the natural and beneficial values served by floodplains;

(5) To minimize the destruction, loss, or degradation of wetlands;

(6) To preserve and enhance the natural and beneficial values of wetlands; and

(7) To avoid direct or indirect support of floodplain development.

(d) These procedures are general in nature. Postal Service Handbook RE-6, *Environmental Procedures*, provides detailed procedures for implementing these executive orders.

§ 776.2 Responsibility.

The Assistant Postmaster General, Facilities Department, is responsible for overall compliance with these procedures.

[46 FR 22366, Apr. 17, 1981, as amended at 51 FR 40170, Nov. 5, 1986]

§ 776.3 Scope.

These procedures are applicable to every proposed postal facility project which involves:

(a) New contruction, for ownership or lease;

(b) Existing buildings, owned or leased, except the acquisition of existing leased facilities when no substantial external change in the configuration of the facility will occur;

(c) Modernization or improvement of an existing facility where the external configuration of the building or the use of the facility is changed substantially and significantly;

(d) Disposal or lease of owned, excess property;

(e) Proposals for granting a property easement or right-of-way to non-federal public or private parties.

§ 776.4 Definitions.

(a) A *floodplain,* for the purposes of these procedures, is the area in which a flood has a one percent chance of occurrence in any given year (also known as a 100-year flood).

(b) A *wetland,* for the purposes of these procedures, is an area that is inundated by surface or ground water frequently enough to support a prevalence of vegetable or aquatic life requiring saturated or seasonally saturated soil conditions for growth and reproduction.

[46 FR 22366, Apr. 17, 1981, as amended at 55 FR 10455, Mar. 21, 1990]

§ 776.5 New construction.

(a) *Construction in floodplain/wetland.* During the evaluation of contending sites for a proposed project, information concerning impacts on wetlands and floodplains will be collected and considered. If use of a site would require construction in a floodplain or wetland, the site may be considered only when there is no practicable alternative site.

(b) *Floodplain/Wetland Information.* Floodplain and wetland information must be compiled and considered throughout the facility planning process. If a proposed action will occur in or impact a floodplain or wetland site, specific floodplain or wetland information must be developed. As a minimum, the information should:

(1) Document whether the proposed action will directly or indirectly support floodplain development.

(2) Document the impacts a proposed action would have on the floodplain or wetland, including positive and negative; concentrated and dispersed; short-term and long-term.

(3) Document the flood hazard and risk to lives and property.

(4) Present the natural and beneficial floodplain values.

(5) Present measures which will preserve the floodplain, minimize harm to it, or restore it. Minimization of harm is assessed in terms of:

(i) The amount of investment at risk or the flood loss potential of the action itself,

(ii) The impact the action may have on others, and

(iii) The impact the action may have on floodplain values.

(c) *Environmental Assessment/Impact Statement.* Information developed concerning the floodplain or wetland must be evaluated in an Environmental Impact Statement or an Environmental Assessment, if either is prepared, and made available to the public under 39 CFR Part 775.

(d) *Site planning.* During site evaluation, a determination must be made whether any of the identified site alternatives would require construction in, or appear to have an impact on, a floodplain or wetland. This information will be included as part of any required Environmental Assessment.

(e) *Analysis of alternatives.* If any of the site alternatives identified under paragraph (d) of this section would involve construction within a floodplain or wetland, an analysis of alternatives must be prepared, and must include:

(1) Alternate sites as identified in the site planning process;

(2) Other means which accomplish the same purpose as the proposed action; and

(3) A no-action alternative.

(f) *Reevaluation.* If, after consideration of information and analyses produced under paragraphs (b), (d), and (e) of this section, and (if required) review through an Environmental Assessment or Environmental Impact Statement, the determination is that there appears to be no practicable alternative to constructing in a floodplain or wetland, a final reevaluation of alternatives must be conducted. The Facilities Service Center Director is responsible for this reevaluation. To facilitate this reevaluation, the following data must be submitted to the Facilities Service Center Director:

(1) A summary of reasons why the rejected alternatives and alternative sites, if any, were considered impracticable.

(2) Detailed descriptions of all rejected alternatives and alternative sites.

(3) A summary of comments received from the public and the appropriate review officials identified in the Postal Service regulations and procedures governing intergovernmental review of Postal Service facility project actions as a result of proper public notices.

(4) Documentation from the site evaluation and planning process.

(5) The Environmental Assessment or Environmental Impact Statement, if either was required.

(6) The floodplain or wetland location map from which the determination was made. The map or other information should indicate appropriate site elevations (contours), base floor elevation, and the floodplain elevation at the site.

(7) The facility functional design specifications or site utilization drawings, if available.

(8) Other information pertinent to the proposal as determined by the stage of development of the project.

(g) *Alternative Available.* If the Facilities Service Center Director, determines that there may be a practicable site alternative to the one selected, the appropriate Postal Service organization is advised to abandon the selected course and pursue other alternatives.

(h) *No alternative.* If the Facilities Service Center Director determines that there is not a practicable alternative to constructing in a floodplain or wetland, the appropriate Postal Service organization is so advised. The Director may provide instructions for mandatory measures to be accomplished during design and construction to minimize harm to the floodplain or wetland.

(i) *Public Notice.* If there is no practicable alternative to constructing in a floodplain or wetland, the Facilities Service Center Director, must provide a public notice (see § 776.8) as soon as possible for the proposed action. The notice includes:

(1) A description of why the proposed action must be located in a floodplain or wetland;

(2) A description of all significant facts considered in making the determination, including alternative sites and actions;

(3) A statement indicating whether the actions conform to applicable state or local floodplain/wetland protection standards;

(4) If applicable, a statement indicating why the National Flood Insurance Program criteria are demonstrably inappropriate for the proposed action;

(5) A description of measures that will be taken to minimize harm to the floodplain or wetland;

(6) A statement indicating how the action affects natural or beneficial floodplain values; and

(7) A list of any other involved agencies or individuals.

(j) *Design Requirements.* If structures impact, are located in, or support development of a floodplain or wetland, the design must include measures necessary (1) to minimize harm to the floodplain or wetland; (2) to reduce the risk of flood loss; (3) to minimize destruction, loss, or degradation of wetlands; (4) to minimize the impact on human safety, health, and welfare; and (5) to restore and preserve the natural and beneficial floodplain and wetland values. Construction must conform, at a minimum, to the standards and criteria of the National Flood Insurance Program, except where those standards are demonstrably inappropriate for postal purposes.

[46 FR 22366, Apr. 17, 1981, as amended at 48 FR 29378, June 24, 1983; 50 FR 32411, Aug. 12, 1985; 51 FR 40170, Nov. 5, 1986; 55 FR 10455, Mar. 21, 1990; 55 FR 12822, Apr. 6, 1990]

§ 776.6 Existing buildings, owned or leased.

(a) *Installing Markers for Flood Hazards.* If property used by the general public has suffered flood damage or is located in a floodplain or flood hazard area, conspicuous markers must be installed on structures and other appropriate places to show past flood record height and the probable 100-year flood height. These must be installed where they will be readily visible to the general public visiting or using the facility.

(b) *Warning Procedures for Floods.* The Regional Director, Mail Processing Department, must develop warning and evacuation procedures for properties subject to flash floods or rapid rise floods.

§ 776.7 Disposal, lease, easement to nonfederal public or private parties.

For actions involving a lease, easement right-of-way, or disposal to nonfederal public or private parties, a determination whether the proposed action will occur in a floodplain or wetland must be made. If the action will occur in a floodplain or wetland, the Postal Service must:

(a) Reference in the conveyance those uses that are restricted under identified federal, state, or local floodplain or wetland regulations; and

(b) Attach other appropriate restrictions to the use of properties by the Grantee or purchaser and any successors, which assure (1) that harm to lives, property, and the floodplain or wetland values are identified and are minimized, and (2) that floodplain or wetland values are restored and preserved, except where prohibited by law; or

(c) Withhold the property from conveyance.

§ 776.8 Public notice.

(a) Public notice of Postal Service plans for locating a proposed project in a floodplain or a wetland will be sent to: the appropriate review officials identified in the Postal Service regulations and procedures governing intergovernmental review of Postal Service facility project actions; local public officials; local newspapers; and other parties who express interest in the project.

(b) The notice must contain the information described in § 776.5(i).

(c) The public notice also must contain a provision for a 30-day public commenting period before any action is taken to acquire the site.

[46 FR 22366, Apr. 17, 1981, as amended at 48 FR 29378, June 24, 1983]

PART 777—RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES

Subpart A—General Policy, Purpose and Definitions

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777.21 General procedures.
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777.51 Acceptance of donations.

AUTHORITY: 39 U.S.C. 401.

SOURCE: 51 FR 6983, Feb. 27, 1986, unless otherwise noted.

Subpart A—General Policy, Purpose and Definitions

§ 777.11 General policy.

It is the policy of the Postal Service to comply voluntarily with the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91-646; 84 Stat. 1894), hereinafter referred to as the Act.

§ 777.12 Purpose.

The purpose of these regulations is to update policy and procedures for the Postal Service's voluntary compliance with the Act.

§ 777.13 Definitions.

(a) *The Act.* The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91-646; 84 Stat. 1894).

(b) *Business.* Any lawful activity, except a farm operation, that is:

(1) Conducted primarily for the purchase, sale, lease, and/or rental of personal and/or real property, and for the manufacturing, processing, and/or marketing of products, commodities, and/or any other personal property; or

(2) Conducted primarily for the sale of services to the public; or

(3) Solely for the purposes of reimbursing moving and related expenses, conducted primarily for outdoor advertising display purposes, when the display(s) must be moved as a result of the project; or

(4) Conducted by a nonprofit organization that has established its nonprofit status under applicable Federal or State law.

(c) *Small business.* A business having at least one but not more than 500 employees working at the location being acquired.

(d) *Comparable Replacement Dwelling.* A dwelling which is:

(1) Decent, safe, and sanitary.

(2) Functionally similar to the displacement dwelling with particular attention to the number of rooms and living space.

(3) In an area that is not subject to unreasonably adverse environmental conditions, is not generally less desirable than the location of the displacement dwelling with respect to public utilities and commercial and public facilities, and is reasonably accessible to the displaced person's place of employment.

(4) On a site that is typical in size for residential development with normal site improvements including customary landscaping. The site need not include special improvements such as outbuildings, fences, swimming pools, and greenhouses.

(5) Currently available to the displaced person.

(6) Within the financial means of the displaced person.

(e) *Decent, Safe, and Sanitary Dwelling.* A dwelling which meets local housing and occupancy codes and the following standards, unless they are waived for good cause by the Postal Service. The dwelling must:

(1) Be structurally sound, weathertight, and in good repair.

(2) Contain a safe electrical wiring system adequate for lighting and other electrical devices.

(3) Contain a heating system capable of sustaining a healthful temperature of approximately 70 degrees except in those areas where local climatic conditions do not require such a system.

(4) Be adequate in size with respect to the number of rooms and areas of living space needed to accommodate the displaced persons. There shall be a separate, well-lighted and ventilated bathroom that provides privacy to the user and contains a bathtub or shower stall, sink, and toilet, all in good working order and properly connected to appropriate sources of water and to a sewage drainage system. In the case of a housekeeping unit—as opposed to, for example, a room in a boarding house—there shall be a kitchen area that contains a fully usable sink, properly connected to potable hot and cold water and to a sewage draining system, and adequate space and utility service connections for a stove and a refrigerator.

(5) Contain unobstructed egress to safe, open space at ground level.

(6) For displaced persons who are handicapped, be free of any barriers which would preclude their reasonable ingress, egress, or use of the dwelling.

(f) *Displaced Person.* (1) Subject to the additional definitions, limitations and exceptions in paragraph (f)(2) of this section, the term "displaced person" is defined as follows. ("Displaced persons" are entitled to receive benefits only as specifically provided for elsewhere in these regulations.)

(i) A person who owns real property, and who is required to move or to move personal property from the real property following Postal Service action to obtain title to, or a leasehold interest in, such real property by the exercise or the threat of the exercise of eminent domain.

(ii) A person who is a tenant and who is required to move or to move his or her personal property from real property:

(A) Following Postal Service action to obtain the tenant's leasehold interest in such real property by the exercise or the threat of the exercise of eminent domain, or,

(B) Where the Postal Service acquires a fee interest in the property (including long-term leases of 50 years or more), as a result of a Postal Service notice of displacement or notice to vacate such real property, provided the tenant was lawfully in possession on the date title to such property transfers to the Postal Service. (The requirement that the tenant occupy such real property on the date title in such real property transfers to the Postal Service may be waived for good cause by the Postal Service.)

(C) Where such real property was used to construct a new building for the express purpose of leasing to the Postal Service under circumstances where such tenant would have been a "displaced person" hereunder had the Postal Service itself acquired the land and required the removal of the tenant to undertake construction of the building for Postal Service ownership.

(iii) Where the Postal Service acquires either a fee interest or a leasehold interest in the property, a person who is a residential tenant and is or will be required to move or to move his or her property from the real property, in order for the Postal Service to accomplish the project for which the property was acquired, provided such tenant occupies such real property on the date title in such real property transfers to the Postal Service or the date the Postal Service leases or contracts to lease such property, and further provided such tenant was lawfully in possession at the time of the initiation of negotiations. (The requirement that the tenant occupy such real property on the date title in such real property transfers to the Postal Service may be waived for good cause by the Postal Service.)

(2) The term "displaced person" covers only persons meeting the requirements in paragraph (f)(1) of this section. The term "displaced person" does not cover the following non-exclusive list of examples.

(i) An owner who voluntarily sells his or her real property to the Postal Service, or,

(ii) A tenant who voluntarily transfers his or her leasehold interest to the Postal Service without the exercise or the threat of the exercise of eminent domain, or,

(iii) A tenant who is not lawfully in possession at the times for which lawful possession is specified in paragraphs (f)(1)(ii)(B) and (f)(1)(iii) of this section. A tenant who was legally required by the lease or otherwise to have moved from the property at the times specified in such paragraphs shall not be considered to be lawfully in possession.

(iv) A person who, at the determination of the Postal Service, is not required to relocate permanently, or,

(v) A person who, after receiving a notice of displacement or notice to vacate by the Postal Service, is notified in writing that he or she will not be displaced. Such later notification shall not be issued if the person has already moved. If such latter notification is issued, the Postal Service shall reimburse the person for any reasonable expenses incurred to satisfy any binding contractual relocation obligations entered into after the effective date of the notice of displacement or the notice to vacate or,

(vi) A person who is required to temporarily vacate the premises in order to permit fumigation, repair, painting, or other maintenance or code of enforcement work or,

(vii) A tenant who is required to move from real property as a result of a notice from the Postal Service to vacate such real property where such notice to vacate is issued five years or more after the date of the acquisition of such real property. A tenant who is given a notice to vacate as a result of failure to comply with the terms of his/her lease with the Postal Service or failure to renew his/her lease under prevailing market conditions is not considered to be a displaced person.

(viii) A mobile home occupant who owns the site on which the mobile home is located and who voluntarily sells the site to the Postal Service, regardless of whether such person owns or rents the mobile home.

(ix) A person whose property is acquired through a "friendly condemnation action" where price is not an issue.

(g) *Displacement Dwelling.* The dwelling acquired by the Postal Service from which a displaced person is required to move.

(h) *Dwelling.* The place of permanent or customary and usual residence of a person including a single family house; a single family unit in a two-family, multi-family, or multi-purpose property; a unit of a condominium or cooperative housing project; a non-housekeeping unit (i.e. room in a boarding house); a mobile home; or any other residential unit.

(i) *Family.* Two or more individuals who are related by blood, adoption, marriage, or legal guardianship who live together as a family unit. If the Postal Service considers that circumstances warrant, others who live together as a family unit may be treated as if they are a family for the purpose of determining assistance under these regulations.

(j) *Farm Operation.* Any activity conducted solely or primarily for the production of one or more types of agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

(k) *Financial Means.* A comparable replacement dwelling is within the financial means of the displaced family or individual if the average monthly rental or housing cost (e.g., monthly mortgage payments, insurance for the dwelling unit, property taxes, and other reasonable recurring related expenses) which the displaced person will be required to pay does not exceed the greater of 25 percent of the monthly gross income of the displaced family or individual or the ratio of the present monthly rental or housing cost to the gross income of the displaced family or individual. (Supplemental payments made by public agencies are to be included in gross income for purposes of these comparisons.)

(l) *Initiation of Negotiations.* In the case where eminent domain is neither exercised nor threatened to be exercised, the initiation of negotiations is the initial written communication stating a price by the owner or the owner's representative to the Postal Service, or by the Postal Service to the owner or the owner's representative, regarding a proposed acquisition (by purchase or lease) or an interest in a specific piece of real property. In the case where eminent domain is either exercised or threatened to be exercised, the initiation of negotiations is the date the Postal Service makes a written offer of just compensation.

(m) *Notice of Displacement.* A notice given in writing by the Postal Service to a person that he or she will be displaced from his or her place of residence, business or farm, as a result of a facility action by the Postal Service. A notice of displacement may be combined with or in a notice to vacate.

(n) *Notice to Vacate.* A notice given in writing by the Postal Service to a person that he or she is to vacate postal owned property on or before a certain date. A notice to vacate may be combined with or in a notice of displacement.

(o) *Owner of Displacement Dwelling.* A person is considered to be an owner, if, at the initiation of negotiations, the person holds any of the following interests in real property acquired for a postal project:

(1) Fee title, a life estate, a 99-year lease, or a lease, including any options for extension, with at least 50 years to run from the date of acquisition; or

(2) An interest other than leasehold interest in a cooperative housing project which includes the right to occupy a dwelling; or

(3) A contract to purchase any of the interests or estates described in paragraph (o)(1) or (o)(2) of this section; or

(4) Any other interest, including a partial interest, which in the judgment of the Postal Service, warrants consideration as ownership.

(p) *Person.* Any individual, family, partnership, corporation, association, business or farm operation.

(q) *Personal Property.* Any tangible property, not considered part of the real property, for which payment has not been included in the acquisition cost.

(r) *Tenant.* A person who has the legal right to temporary use and occupancy of real property owned by another. In some cases, these regulations also use the term "tenant" to refer to a person who occupies real property owned by another but whose legal right was terminated due to a timely notice to vacate the real property used and occupied.

[51 FR 6983, Feb. 27, 1986, as amended at 54 FR 10666, Mar. 15, 1989]

§ 777.14 Certain indirect actions prohibited.

Postal employees shall take no indirect, coercive, or deceptive actions to cause persons to move from real property in an effort to avoid the circumstances under which such persons would be eligible to receive relocation benefits as displaced persons under these regulations. If a claimant demonstrates that such prohibited action caused him or her to move, he or she will be treated as a displaced person hereunder, if he or she otherwise meets the definition of a displaced person.

Subpart B—Uniform Relocation Assistance

§ 777.21 General procedures.

(a) *Planning Prior to Site Selection.* When acquisition of a site under consideration would likely involve displacement of a person eligible under § 777.13 for relocation assistance, the Postal Service representative shall prepare a relocation needs and availability analysis. The Postal Service representative shall include in the analysis a complete inventory of persons who may be displaced and specifically identify their needs.

(b) *Planning Subsequent to Site Selection.* Subsequent to site selection, the Postal Service must review the relocation needs and availability analysis and establish a specific plan for providing the assistance covered by these regulations to any eligible displaced persons. It will further determine the necessity of establishing an on-site relocation office which would be accessible to displaced persons and would be staffed with relocation personnel qualified to render all relocation services. The Postal Service will assure that cost estimates reflect current market conditions and that funding is available for all relocation assistance and activities.

(c) *Contracting for Relocation Services.* When the Postal Service determines it to be advantageous, it may enter into a relocation assistance service contract with a public agency or private firm having expertise in relocation assistance. The contract must require the contractor to follow Postal Service relocation assistance regulations.

(d) *Notice to Vacate, Ninety Day Requirement.* Postal Service notices to vacate must be issued at least 90 days prior to the date the property must be vacated. Any such notice must be in writing and delivered in person with receipt acknowledged, or by certified mail, return receipt requested. The 90-day requirement does not apply to any such notice issued subsequent to a valid notice to vacate issued by the prior owner of the property. A 90-day notice may be given with, or such notice may be combined with, but such notice must not be given before, the notice of displacement referred to in paragraph (f) of this section.

(e) *Shorter Notice Period, Unusual Circumstances.* An occupant may be required to vacate the property on less than 90 days advance written notice if the Postal Service determines that a 90-day notice is impracticable. An example of such a situation is when the person's continued occupancy of the property would constitute a substantial danger to the person's health or safety.

(f) *Notice of Displacement.* Normally, a notice of displacement will be given at the time of acquisition or later. Such notice must not be given earlier than the time of contracting except in the case of acquisitions by eminent domain or by the threat of eminent domain. Such notice may be given at the time of contracting or between the time of contracting and the time of acquisition if the Postal Service considers it wise to start the displacement process then and if, in the judgment of the Postal Service, it is clear that person will in fact be a displaced person.

(g) *Notice of Availability of Advisory Services.* The notice of displacement will state that relocation assistance advisory services will be available to the displaced person and will designate who will provide such services.

(h) *Eviction for cause.* Any person occupying real property and not in unlawful occupancy on the date of initiation of negotiations is presumed to be entitled to relocation payments and other assistance unless the Postal Service determines that:

(1) The person received an eviction notice prior to initiation of negotiations and, as a result of that notice, is later evicted; or

(2) The person is evicted after initiation of negotiations for serious or repeated violation of material terms of the lease or occupancy agreement; and

(3) In either case the eviction is not undertaken for the purpose of evading the obligation to make the relocation payments and other assistance available.

[51 FR 6983, Feb. 27, 1986, as amended at 54 FR 10667, Mar. 15, 1989]

§ 777.22 Relocation assistance advisory services.

(a) *General.* The Postal Service carries out an advisory assistance program for displaced persons.

(b) *Relocation Information.* The Postal Service must contact each displaced person to provide an informational statement outlining the assistance available to the particular person. If it is impracticable to contact the displaced persons personally, the informational statement must be mailed to the persons, certified mail, return receipt requested.

(c) *Time of Initial Contact to Provide Relocation Information.* The initial contact to provide relocation information must take place by the following dates:

(1) Where acquisition of the property is to occur as a result of the exercise or the threat of the exercise of eminent domain, at the time of initiation of negotiation or within 30 days thereafter.

(2) In any other instance such contact must be made prior to acquisition and prior to the notice of displacement or the notice to vacate, but it should normally not be made prior to contracting for the acquisition.

(d) *Service to be Provided.* The advisory program shall include such services as may be necessary or appropriate to:

(1) Provide current information on the availability, purchase prices, financing, and rental costs of replacement dwellings.

(2) For displaced persons eligible for replacement housing payments, explain that the displaced person cannot be required to move unless at least one comparable replacement dwelling is made available.

(i) At the request of the displaced person, the Postal Service must inform that person, in writing, of the specific comparable replacement dwelling used as the basis for the replacement housing payment offer, the price or rent used to establish the upper limit of that offer, the basis for the determination, and the amount of the replacement housing payment to which he or she may be entitled.

(ii) Where feasible, housing must be inspected by the Postal Service representative prior to its being made available to assure that it is a comparable replacement dwelling and meets the decent, safe, and sanitary standard. The displaced person must be notified that a replacement housing payment will not be made unless the replacement dwelling is inspected and determined to be decent, safe, and sanitary.

(iii) Whenever possible, minority displaced persons must be given reasonable opportunities to relocate to comparable dwellings, not located in a an area of minority concentration, that are within their financial means. This policy, however, does not require the Postal Service to provide a person a larger payment than is necessary to enable that person to relocate to a comparable replacement dwelling.

(iv) All displaced persons, especially the elderly and handicapped, must be offered transportation to inspect housing to which they are referred.

(3) Provide current and continuing information on the availability, purchase prices, and rental costs of comparable and suitable commercial and farm properties and locations, and assist any person displaced from a business or farm operation to obtain

and become established in a suitable replacement location.

(4) Minimize hardships to displaced persons in adjusting to relocation by providing counseling, advice about other sources of assistance that may be available, and such other help as may be appropriate.

(5) Supply displaced persons with appropriate information concerning Federal, State, and local housing programs, disaster loan and other programs administered by the Small Business Administration, and other Federal, State, and local programs offering assistance to displaced persons.

(6) Upon selection of a replacement property by a displaced person, the Postal Service may arrange for a representative to assist the displaced person with necessary arrangements for the move.

§ 777.23 Moving expenses.

(a) *Eligibility.* (1) Residential displaced persons are entitled to benefits under paragraphs (b) and (c) of this section.

(2) Business and farm displaced persons are entitled to benefits under paragraphs (d) through (k) of this section.

(3) Those business or farm displaced persons who reside on the property where the business or farm operation is conducted are eligible for applicable benefits both as residents and as business or farm displaced persons, but no duplicate payments are allowed.

(4) Persons who are required to move or to move personal property from real property, an interest in which is not acquired by the Postal Service, when it is determined by the Postal Service that such move is necessary or reasonable because of the Postal Service's having acquired an interest in other real property owned or leased by such persons and on which such persons conduct a business or farm operation, under circumstances where such persons are displaced persons with regard to such other real property or would have been displaced persons with regard to such other real property had they been required to move or to move personal property from such other real property, are entitled to benefits as residential, business or farm displaced persons under paragraphs (a)(1) or (a)(2) of this section.

(5) Eligibility for moving expenses does not depend upon the owner's or tenant's actual occupancy of the displacement real property.

(b) *Allowable Expenses, Residential Moves.* Allowable moving expenses include:

(1) Transportation of the displaced person and his or her personal property. Transportation costs are limited to the costs of a move up to a distance of 50 miles unless the Postal Service determines that relocation beyond 50 miles is justified.

(2) Packing, crating, unpacking, and uncrating of the personal property.

(3) Disconnecting, dismantling, removing, reassembling, and reinstalling relocated household appliances and other personal property.

(4) Storage of the personal property not to exceed 12 months unless the Postal Service determines that a longer period is necessary.

(5) Reasonable costs for insurance for the replacement value of the personal property being moved or stored.

(6) When determined to be fair and reasonable by the Postal Service the replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his or her agent, or employee), but only where insurance covering such loss, theft, or damage is not reasonably available.

(7) Other moving related expenses that are not listed as non-allowable under paragraph (l)(3) of this section and which the Postal Service determines to be reasonable and necessary.

(c) *Fixed payment for moving expenses. residential moves.* Any person displaced from a dewlling or a seasonal residence is entitled to receive an expense and dislocation allowance as an alternative to a payment for actual moving and related expenses. This allowance shall be determined according to the applicable schedule approved by the Federal Highway Administration. This includes a provision that the expense and dislocation allowance to a person with minimal personal possessions who is in occupancy of a dormitory style room shared by two or more other unrelated persons or a person whose residential move is performed by an agency at no cost to the person shall be limited to $50.

(d) *Allowable Expenses, Business and Farm Operations.* Allowable expenses include:

(1) The expenses allowed under paragraphs (b) (2), (4), (5) and (6) of this section;

(2) Transportation of personal property. Transportation costs are limited to a distance up to 50 miles unless the Postal Service makes a finding that relocation beyond 50 miles is justified.

(3) Disconnecting, dismantling, removing, reassembling, and reinstalling relocated machinery, equipment, and other personal property, and substitute personal property as described in paragraph (d)(8) of this section. This includes connection to utilities available at the replacement site or building and minor modifications to personal property to adapt it to the replacement site or building. Excluded are expenses for providing utilities to or installing utilities at the replacement site or building and expenses for repair, alteration, improvement or modification of the replacement site or building. This exclusion includes, but is not limited to, any repairs, alterations, improvements, or modifications required by local code to bring the building up to standard.

(4) Any license, permit, or certification fee required of the displaced person by a governmental authority at the replacement location. However, this payment is limited to the pro rata value for the remaining useful life of any existing license, permit, or certification.

(5) Reasonable professional services necessary for planning the move of the personal property. Such professional services must be approved in advance by the Postal Service and shall not exceed the lowest of three acceptable bids.

(6) Relettering signs and replacing stationary on hand at the time of displacement that are made obsolete as a result of the move.

(7) Actual direct loss of tangible personal property incurred as a result of moving or discontinuing the business or farm operation. The payment will consist of the reasonable costs incurred in attempting to sell the item plus the lesser of:

(i) The fair market value of the item for continued use at the displacement site, less the proceeds from its sale. (To be eligible for this payment the claimant must make a good faith effort to sell the personal property, unless the Postal Service determines that such effort is not necessary. When payment for property loss is claimed for goods held for sale, the fair market value must be based on the cost of the goods to the business, not the potential selling price.); or

(ii) The estimated cost of moving the item no more than 50 miles, but with no allowance for storage.

(8) If an item of personal property which is used as part of a business or farm operation is not moved, is promptly replaced with a substitute item that performs a comparable function at the replacement site, the displaced person is entitled to payment of the lesser of:

(i) The cost of the substitute item, including installation costs at the replacement site, less any proceeds from the sale. (To be eligible for payments under paragraph (d)(8) of this section, the claimant must make a good faith effort to sell the personal property, unless the Postal Service determines that such effort is not necessary.)

(ii) The estimated cost of moving and reinstalling the replaced item, based on the lowest acceptable bid or estimate obtained by the Postal Service for eligible moving and related expenses, but with no allowance for storage.

(9) A displaced business or farm operation is entitled to reimbursement for actual expenses, not to exceed $1,000, which the Postal Service determines to be reasonable and which are incurred in searching for a replacement location. These expenses include transportation, meals and lodging away from home, time spent searching (based on reasonable salary or earnings) and fees paid to a real estate agent or broker to locate a replacement site, exclusive of any fees or commissions related to the purchase of such site.

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(10) Other moving-related expenses, not listed as non-allowable under paragraph (i)(3) of this section, which the Postal Service determines to be reasonable and necessary.

(e) *Fixed Payment in Lieu of Moving Expenses, Business Moves.* Any displaced business, other than an outdoor advertising display business, or a nonprofit organization, is eligible for a fixed payment in lieu of actual moving and related expenses. This payment must be in an amount equal to the average annual net earnings of the business at that location, as computed under paragraph (i) of this section, but not less than $1,000 nor more than $20,000. For a displaced person to qualify for this payment, the Postal Service must determine that:

(1) The business owns or rents personal property which must be moved in connection with such displacement and for which an expense would be incurred in such move; and, the business vacates or relocates from its displacement site; and

(2) The business cannot be relocated without a substantial loss of its existing patronage (clientele or net earnings). A business is assumed to meet this test unless the Postal Service determines that it will not suffer a substantial loss of its existing patronage; and

(3) The business is not part of a commercial enterprise having more than three other entities which are not being acquired by the Postal Service, and which are under the same ownership and engaged in the same or similar business activities.

(4) The business contributed materially to the income of the displaced person during the 2 taxable years prior to displacement (see paragraph (h) of this section). However, the Postal Service may waive this test for good cause.

(5) The business is not operated at a displacement dwelling solely for the purpose of renting such dwelling to others.

(f) *Determining the Number of Businesses.* In determining whether two or more displaced legal entities constitute a single business which is entitled to only one fixed payment, all pertinent factors shall be considered, including the extent to which:

(1) The same premises and equipment are shared;

(2) Substantially identical or interrelated business functions are carried out and business and finacial affairs are commingled;

(3) The entities are held out to the public, and to those customarily dealing with them, as one business; and

(4) The same person or closely related persons own, control, or manage the affairs of the entities.

(g) *Fixed Payment in Lieu of Moving Expenses, Farm Operation.* Any displaced farm operation may choose a fixed payment in lieu of a payment for actual moving and related expenses in an amount equal to its average annual net earnings as computed in accordance with paragraph (i) of this section, but not less than $1,000 nor more than $20,000. For a displaced person to qualify for this payment, the Postal Service must determine that the farm operation contributed materially to the income of the displaced person during the two taxable years prior to the displacement (see paragraph (h) of this section). In the case of acquisition of land which was part of a farm operation before the acquisition, the fixed payment shall be made only if the Postal Service determines that:

(1) The acquisition of part of the land caused the operator to be displaced from the operation on the remaining land; or

(2) The partial acquisition caused a substantial change in the nature of the farm operation.

(h) *Contributes materially.* The term "contributes materially," as used in paragraphs (e) and (g) of this section means that, during the 2 taxable years prior to the taxable year in which displacement occurs, or during such other period as the Postal Service determines to be more equitable, a business or farm operation:

(1) Had average annual gross receipts of at least $5,000; or

(2) Had average annual net earnings of at least $1,000; or

(3) Contributed at least 33⅓ percent of the owner's or operator's average annual gross income from all sources.

(4) If the application of the above criteria creates an inequity or hardship in any given case, the Postal Service may approve the use of other criteria as determined appropriate.

(i) *Average Annual Net Earnings of a Business or Farm Operation.* The average annual net earnings of a business or farm operation are one-half of its net earnings before Federal, State, and local income taxes during the 2 taxable years immediately prior to the taxable year in which it was displaced. If the business or farm was not in operation for the full 2 taxable years prior to displacement, net earnings shall be based on the actual period of operation at the displacement site during the 2 taxable years prior to displacement, projected to an annual rate. Average annual net earnings may be based upon a different period of time when the Postal Service determines it to be more equitable. Net earnings include any compensation obtained from the business or farm operation by its owner, the owner's spouse, and dependents. The displaced person shall furnish the Postal Service proof of net earnings through income tax returns, certified financial statements, or other reasonable evidence which the Postal Service determines is satisfactory.

(j) *Nonprofit Organizations.* Any displaced nonprofit organization may choose a fixed payment in lieu of a payment for actual moving and related expenses in an amount of $2,500, if the Postal Service determines that it:

(1) Cannot be relocated without a substantial loss of existing patronage (membership or clientele). A nonprofit organization is assumed to meet this test, unless the Postal Service demonstrates otherwise; and

(2) Is not part of an enterprise having at least one other establishment engaged in the same or similar activity which is not being acquired by the Postal Service.

(k) *Relocation of Outdoor Advertising Signs.* The amount of a payment for direct loss of an advertising sign which is personal property is the lesser of:

(1) The depreciated replacement cost of the sign, as determined by the Postal Service, less the proceeds from its sale; (To be eligible for payments under this paragraph (k)(1), the claimant must make a good faith effort to sell the sign, unless the Postal Service determines that such effort is not necessary.) or

(2) The estimated cost of moving the sign, no more than 50 miles, but with no allowance for storage.

(l) *Payment for actual reasonable reestablishment expenses, nonresidential moves.* In addition to the payments available as allowable expenses for nonresidential moves, a small business, farm or non-profit organization may be eligible to receive a payment, not to exceed $10,000 for expenses actually incurred in relocating and reestablishing such small business, farm or nonprofit organization at a replacement site.

(1) *Allowable expenses.* Reestablishment expenses must be reasonable and necessary, as determined by the Postal Service. They may include the following:

(i) Repairs or improvements to the replacement real property as required by federal, state, local law, code or ordinance.

(ii) Modifications to the replacement property to accommodate the business operation or make replacement structures suitable for occupancy.

(iii) Construction and installation costs not to exceed $1,500 for exterior signing to advertise the business.

(iv) Installation of security or fire protection devices.

(v) Provision of utilities from right-of-way to improvements on the replacement site.

(vi) Redecoration or replacement of soiled or worn surfaces at the replacement site, such as paint, panelling or carpeting.

(vii) Licenses, fees and permits when not paid as part of the moving expenses.

(viii) Feasibility surveys, soil testing and marketing studies.

(ix) Advertisement of replacement location, not to exceed $1,500

(x) Professional services in connection with the purchase or lease of a replacement site.

(xi) Increased costs of operation during the first two years at the replacement site, not to exceed $5,000,

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for such items as lease or rental charges, personal or real property taxes, insurance premiums, utility charges including impact fees or one time assessments for anticipated heavy utility usage.

(xii) Other items that the Postal Service considers essential to the reestablishment of the business.

(2) *Non-allowable expenses.* Following is a non-exclusive listing of reestablishment expenditures not considered to be reasonable, necessary or otherwise allowable.

(i) Purchase of capital assets such as office furniture, filing cabinets, machinery, or trade fixtures.

(ii) Purchase of manufacturing materials, production supplies, product inventory, or other items used in the normal course of the business operation.

(iii) Interior or exterior refurbishment at the replacement site which are for cosmetic purposes only.

(iv) Interest on money borrowed to make the move or purchase the replacement property.

(v) Payment to a part-time business in the home which does not contribute materially to the household income.

(vi) Payment to a person whose sole business at a replacement dwelling is the rental of such dwelling to others.

(m) *General Provisions*—(1) *Self moves.* If the displaced person elects to take full responsibility for all or a part of the move, the Postal Service may approve a payment for the person's moving expenses in an amount not to exceed the lowest of three bids acceptable to the Postal Service. Bids may be obtained by either the displaced person or the Postal Service.

(2) *Transfer of Ownership.* Upon request by the Postal Service and in accordance with applicable law, the displaced person may transfer to the Postal Service ownership of any personal property that is not to be moved, sold, or traded-in by executing a disclaimer of all rights or interest in the property.

(3) *Non-Allowable Expenses.* Except as specifically otherwise provided herein, a displaced person is not entitled to payment for:

(i) The cost of moving any structure or other real property improvement.

(ii) Loss of goodwill.

(iii) Loss of profits.

(iv) Loss of trained employees.

(v) Any additional operating expenses of a business or farm operation caused by operating in a new location.

(vi) Personal injury.

(vii) Any legal fee or other cost for perparing a claim for a relocation payment or for representing the displaced person before the Postal Service.

(viii) Expenses for searching for a replacement dwelling.

(ix) Costs for storage of personal property on real property owned or leased by the displaced person.

[51 FR 6983, Feb. 27, 1986, as amended at 52 FR 48029, Dec. 17, 1987; 54 FR 10667, Mar. 15, 1989]

§ 777.24 Replacement housing payments.

(a) Residential displaced persons are eligible for replacement housing payments as follows:

(1) Residential displaced persons who lawfully and continuously owned and occupied a displacement dwelling for not less than 180 days prior to the initiation of negotiations are entitled to the benefits set out in paragraph (b) of this section. Such displaced persons may alternately choose the benefits under paragraph (f) of this section.

(2) Residential displaced persons who lawfully and continuously owned and occupied, and residential displaced persons who were tenants and lawfully and continously occupied, a displacement dwelling for not less than 90 days prior to the initiation of negotiations are entitled to the benefits set out in paragraph (e) of this section.

(3) Where the replacement housing payment provided hereunder does not provide for housing within the financial means (see § 777.13(j)) of the displaced person, see § 777.27, Last Resort Housing.

(b) *Benefits for 180 Day Owner Occupants.* Displaced persons eligible under paragraph (a)(1) of this section are entitled to benefits as set out below:

(1) An amount which is the sum of:

(i) The amount which must be added to the acquisition cost of the displacement dwelling to provide a total amount equal to the lesser of:

(A) The reasonable cost of a comparable replacement dwelling as determined by paragraph (c) of this section; or

(B) The purchase price of a decent, safe and sanitary replacement dwelling actually purchased and occupied by the displaced person; plus

(ii) Interest Cost (see paragraph (d) of this section); plus

(iii) Incidental Expenses (see paragraph (h) of this section).

(2) The benefits in paragraph (b)(1) of this section, are limited to a maximum payment of $22,500.

(3) The benefits in paragraph (b)(1) of this section, are available only if a decent, safe and sanitary replacement dwelling is purchased within 12 months after the latter of:

(i) The date of acquisition or, in the case of condemnation, the date the required amount is deposited in a court for the displaced person's benefit, or

(ii) The date the person moves from the displacement dwelling.

(c) *Determining the Cost of a Comparable Replacement Dwelling.* The cost of a comparable replacement dwelling for purposes of benefits to be paid to 180 day owner occupants will be determined by applying the following:

(1) If available, at least three representative comparable replacement dwellings must be examined and the payment offer computed on the cost of the fair market value of the dwelling most closely comparable to the displacement dwelling.

(2) To the extent, feasible, comparable replacement dwellings will be selected from the neighborhood in which the displacement dwelling was located. If this is not possible, comparable replacement dwellings will be selected from nearby or similar neighborhoods where housing costs are similar.

(d) *Increased Mortgage Interest Costs.* The amount to be paid to a displaced 180 day owner occupant for increased mortgage interest costs is the amount, if any, by which the present value of the interest on the mortgage loan(s) on the replacement dwelling plus any other debt service costs exceeds the present value of the interest on the mortgage loan(s) on the displacement dwelling plus purchaser's points and loan origination fees, subject to the following:

(1) The payment must be based only on bona fide mortgages that were a valid lien on the displacement dwelling for at least 180 days prior to the initiation of negotiations. All such mortgages on the displacement dwelling must be used to compute the payment.

(2) The payment must be based on the unpaid mortgage balance on the displacement dwelling or the new mortgage amount, whichever is less.

(3) The payment must be based on the remaining term of the mortgage on the displacement dwelling or the actual term of the new mortgage, whichever is shorter.

(4) The new mortgage must be a bona fide mortgage and its interest rate must not exceed the prevailing interest rate currently charged by mortgage lending institutions in the area in which the replacement dwelling is located.

(5) The discount rate used to compute the present value of the increased interest cost must be the prevailing interest rate paid on demand savings deposits by commercial banks in the area in which the replacement dwelling is located.

(6) Purchaser's points and loan origination fees, but not seller's points, are reimbursable to the extent they are not paid as incidental expenses, they do not exceed rates normal to similar real estate transactions in the area, and the Postal Service determines them to be necessary. The computation of such points and fees shall be based on the unpaid mortgage balance on the displacement dwelling, or the new mortgage amount, whichever is less.

(e) *Benefits for 90 Day Owner Occupant and Tenants.* Displaced persons eligible under paragraph (a)(2) of this section are entitled to benefits as set out below:

(1) Rental assistance benefits, as set out in paragraph (f) of this section or downpayment assistane benefits, as set out in paragraph (g) of this section.

(2) The benefits in paragraph (e)(1) of this section, are limited to $5,250.

(3) The benefits in (e)(1) above are available only if a decent, safe and sanitary replacement dwelling is purchased or rented within 12 months after the latter of:

(i) The date of acquisition or, in the case of condemnation, the date the required amount is deposited in the court for the displaced person's benefit, or

(ii) The date the person moves from the displacement dwelling.

(f) *Rental Assistance.* The rental assistance benefits, not to exceed $5,250, for 90 day owner occupants and tenants will be computed as follows:

(1) The amount which must be added to 42 times the average monthly rental paid at the displacement dwelling (or, if the displaced person is an owner occupant, the fair market rental value had the displacement dwelling been rented) for the three-month period prior to displacement to provide a total amount equal to the lesser of:

(i) 42 times the reasonable monthly rental of a comparable replacement dwelling; or

(ii) 42 times the actual monthly rental cost of the decent, safe, and sanitary dwelling actually rented and occupied by the displaced person.

(2) If utilities are included in either the replacement dwelling or the displacement dwelling rent, appropriate utilities must be factored into both rentals. If utilities are not included in either monthly rental then the payment will be computed using the base rental rates.

(3) If, in the opinion of the Postal Service, the monthly rental at the displacement dwelling is significantly below the fair market rent of the displacement dwelling, such fair market rent must be used in computing the rental assistance payment.

(4) The payment under this section must be disbursed in a lump-sum amount unless the Postal Service determines on a case-by-case basis, for good cause, that the payment should be made in installments. Where the rental assistance payment exceeds $5,250 under the provisions of Last Resort Housing, (§ 777.27), installment payments or payments through escrow accounts may be considered.

(g) *Downpayment assistance.* Downpayment assistance, not to exceed $5,250, is available to 90 day owner occupants and 90 day tenants. This $5,250 amount may be considered to include the full amount of the required downpayment and incidental expenses.

(h) *Incidental Expenses.* Incidental expenses covered under paragraph (b)(1)(iii) or (g) of this section are those reasonable costs actually incurred by the displaced person incident to the purchase of a replacement dwelling and customarily paid by the buyer (not to exceed the costs of such for a comparable replacement dwelling). They include:

(1) Legal, closing, and related costs, including those for title search and insurance, preparing conveyance instruments, notary fees, preparing surveys and plats, and recording fees.

(2) Lender, FHA, or VA appraisal fees.

(3) FHA or VA application fee.

(4) Certification of structural soundness when required by the lender.

(5) Credit report.

(6) Owner's and mortgagee's evidence or assurance of title.

(7) Escrow agent's fee.

(8) State revenue or documentary stamps, sales or transfer taxes.

(9) Such other costs as the Postal Service determines to be incidental to the purchase.

[51 FR 6983, Feb. 27, 1986, as amended at 52 FR 48029, Dec. 17, 1987]

§ 777.25 Additional rules for replacement housing payments.

(a) *Multiple Owners.* When a single family dwelling is owned by more than one person and occupied by only some of the 180 day owners (for example, when the dwelling is owned by an estate and only one of the heirs is in occupancy), the occupant(s) is (are) eligible to receive a maximum total price differential which is the lesser of:

(1) The difference between (i) the reasonable cost of a comparable replacement dwelling, as determined under § 777.24(c) and (ii) the acquisition cost of the displacement dwelling; or

(2) The difference between (i) the occupant's share of the acquisition cost of the displacement dwelling and (ii) the purchase price of a decent, safe, and sanitary replacement dwelling actually purchased and occupied by the displaced person.

(b) *Multiple Occupants of One Displacement Dwelling.* If two or more occupants of the displacement dwelling move to separate replacement dwellings, each occupant is entitled to a reasonable prorated share, as determined by the Postal Service, of any relocation payments that would have been made if the occupants moved together to a comparable replacement dwelling. However, if the Postal Service determines that two or more occupants maintained separate households within the same dwelling, such occupants have separate entitlements to relocation payments.

(c) *Mixed Use and Multi-Family Properties Acquired.* If the displacement dwelling was part of a property that contained another dwelling unit or space used for non-residential purposes, or if it is located on a lot larger than that typical for residential purposes, only that portion of the acquisition payment which is actually attributable to the displacement dwelling and site can be considered its acquisition cost when computing the price differential.

(d) *Disaster-Related Insurance Proceeds.* To the extent necessary to avoid duplicate compensation, the amount of any insurance proceeds received by a person in connection with a disaster related loss to the displacement dwelling must be included in the acquisition cost of the displacement dwelling when computing the price differential.

(e) *Inspection of Replacement Dwelling.* Before making a replacement housing payment or releasing a payment from escrow, the Postal Service must inspect the replacement dwelling and determine that it is a decent, safe, and sanitary dwelling.

(f) *Purchase of Replacement Dwelling.* A displaced person is considered to have met the requirement to purchase a replacement dwelling if the person has purchased an existing dwelling; purchased and rahabilitated or moved and restored an existing dwelling; or constructed a new dwelling, provided in each instance the dwelling is determined to be decent, safe and sanitary.

(g) *Conversion of Payment.* A displaced person who initially rents a replacement dwelling and receives a rental assistance payment may, within the required 12 month eligibility period, purchase a decent, safe and sanitary replacement dwelling. In such case, he or she is eligible to revise his or her original claim, and claim any additional assistance for which he or she was originally eligible. However, any portion of the rental assistance payment that has been disbursed must be deducted from the resultant replacement housing payment or downpayment assistance payment.

(h) *Payment After Death.* A replacement housing payment is personal to the displaced person. Upon his or her death, the undisbursed portion of any such payment shall not be paid to the heirs or assigns, except that:

(1) The amount attributable to the displaced person's period of actual occupancy of the replacement housing will be paid.

(2) The full payment must be disbursed in any case in which a member of a displaced family dies and other family members continue to occupy the replacement dwelling selected in accordance with these regulations.

(3) Any portion of a replacement housing payment necessary to satisfy the legal obligation of an estate in connection with the selection of a replacement dwelling by or on behalf of a deceased person must be disbursed to the estate.

(i) *180 Day Owner Retention of Displacement Dwelling.* If a 180 day owner occupant retains ownership of his or her dwelling or the right to move his or her dwelling from the displacement site, and he or she moves it and reoccupies it on a replacement site, the cost of the actual replacement dwelling to be computed for purposes of § 777.24(b)(1)(i)(A) (not to exceed the purchase price of a comparable replacement dwelling) will be the sum of:

(1) The expenses of moving and restoring the retained dwelling to a con-

dition comparable to that prior to the move; and

(2) The salvage or other value deducted from the acquisition cost for the retained ownership; and

(3) Additional costs, if necessary, incurred to make the unit a decent, safe, and sanitary replacement dwelling; and

(4) The cost of the replacement site, not to exceed the cost of a comparable available and suitable replacement site.

(j) *90 Day Owner/Retention of Displacement Dwelling.* A 90 day owner occupant who retains ownership of his or her dwelling or the right to remove his or her dwelling may receive the benefits as if he or she were a 180 day owner occupant subject, however, to a limitation of $5,250 on maximum benefits in lieu of the $22,500 limitation set out in paragraph § 777.24(b)(2).

[51 FR 6983, Feb. 27, 1986, as amended at 54 FR 10668, Mar. 15, 1989]

§ 777.26 Mobile homes.

(a) *Moving Expenses.* Displaced persons who are occupants of mobile homes are eligible for moving expenses under § 777.23 subject to the following:

(1) If the person owns the mobile home, moving expenses may, at the owner's option, include any reasonable costs incurred to move the mobile home to a replacement site, plus the reasonable cost of disassembling, moving, and reassembling any attached appurtenances (such as porches, decks, skirting, and awnings) which were not acquired, anchoring of the unit, and utility "hook-up charges."

(2) If the person rents the mobile home, the Postal Service may allow the person moving expense benefits for moving the mobile home as if the person were an owner of the mobile home under paragraph (a)(1) of this section.

(3) If costs of moving a mobile home are paid as moving expenses under paragraph (a)(1) or (2) of this section, the person may not receive housing assistance benefits hereunder, other than any benefits to which they are entitled that are limited to the site of the mobile home.

(4) Displaced occupants of mobile homes are eligible for moving expenses for personal property other than the mobile home and its appurtenances, but only to the extent the Postal Service does not pay the costs of moving the mobile home (either as moving expenses or replacement housing payments or, if it does pay such costs, the personal property is of a type that is customarily moved separately from the mobile home.)

(b) *Replacement Housing Payments.* Displaced persons who are 180 day or 90 day occupants of mobile homes qualify for replacement housing payments under § 777.24 subject to the following:

(1) If the displaced person owns the mobile home and owns the site, the person is eligible for benefits under either § 777.24 (b) or (e).

(2) If the displaced person rents the mobile home and rents the site the person is eligible for benefits under § 777.24(e).

(3) If the displaced person rents the mobile home and owns the site the person is eligible for benefits under § 777.24(e), with regard to the mobile home and to benefits under § 777.24(b) with regard to the site, subject to a limitation on the home and site benefits combined of $22,500. (Persons who voluntarily sell mobile home sites are not displaced persons and are not entitled to benefits under Subpart B. See § 777.13(e)(2)(viii)).

(4) If the displaced person owns the mobile home and rents the site the person is eligible for benefits under either § 777.24 (b) or (e) with regard to the mobile home and to benefits as a tenant under § 777.24(e) with regard to the site, subject to a limitation on home and site benefits combined of $5,250.

(c) *Special Rules for Mobile Homes.* (1) In computing replacement housing payments for mobile home owners under paragraph (b) of this section, apply the terms of § 777.25 (i) and (j) as appropriate, to transactions involving moving the mobile home to a new site.

(2) The acquisition of a portion of a mobile home park may leave a remainder that is not adequate to continue the operation of the park. When the

Postal Service determines that its acquisition of the real property has had this effect and that for this reason a mobile home occupant located on the remaining part of the property is required to move, such occupant shall be considered a displaced person under these regulations and shall be entitled to such benefits hereunder as the person would otherwise qualify.

[51 FR 6983, Feb. 27, 1986, as amended at 52 FR 48029, Dec. 17, 1987]

§ 777.27 Last resort housing.

(a) *Basic Determination to Provide Last Resort Housing.* A displaced person cannot be required to move from his or her dwelling unless at least one comparable replacement dwelling is made available to him or her which is within his or her financial means. When such comparable replacement dwelling is not available, additional measures may be taken to provide for "last resort" housing for eligible displaced persons.

(b) *Basic Rights of Persons to be Displaced.* The provisions of this section do not deprive any displaced person of any rights the person may have under these regulations such as the right to accept the maximum replacement housing payment available under these regulations and to move to a decent, safe and sanitary replacement dwelling even if such dwelling is beyond the person's financial means.

(c) *Methods of Providing Replacement Housing.* The Postal Service has broad latitude in implementing this section, but implementation must be on a reasonable cost basis. The Postal Service may provide last resort housing using the following methods:

(1) Rehabilitation of and/or additions to an existing replacement dwelling.

(2) The construction of a new replacement dwelling.

(3) The provision of a direct loan which requires regular amortization or deferred repayment. Terms of such loan will be at the discretion of the Postal Service.

(4) A replacement housing payment in excess of the $5,250 and $22,500 limitations contained in § 777.24. A rental subsidy under this section may be provided in installments.

(5) The relocation and any needed rehabilitation of a replacement dwelling.

(6) The purchase or lease of land and/or a replacement dwelling by the Postal Service and subsequent sale or lease to, or exchange with, a displaced person.

(7) The removal of barriers to the handicapped.

(8) Any other method determined by the Postal Service to be reasonable.

(d) *Proof of Financial Need.* Last Resort Housing benefits exceeding the limitations under § 777.24(b)(2) and § 777.24(e)(2) will not be paid unless required to provide housing within the displaced person's financial means. To establish financial means, the displaced person must furnish the Postal Service proof of gross monthly income through income tax returns, certified financial statements or other reasonable evidence which the Postal Service determines is satisfactory.

[51 FR 6983, Feb. 27, 1986, as amended at 52 FR 48029, Dec. 17, 1987]

§ 777.28 Claims and appeals.

(a) *Preparation of Claim.* The relocation representative should assist eligible displaced persons in the preparation of claims for moving assistance and relocation housing assistance. Preliminary review should be conducted in the field by the relocation representative with the displaced person, to preclude technical difficulties in processing the claim at a higher level.

(b) *Documentation.* Any claim for a relocation payment must be supported by such documentation as may be required to support the claim, for example the length of occupancy at the displacement dwelling, the rent paid at the displacement dwelling, expenses incurred in relocating, etc. A displaced person must be provided reasonable assistance to complete and file any required claim.

(c) *Time for Filing.* All claims must be filed with the Postal Service within 18 months after the date of the actual move from the displacement property.

(d) *Review, Approval and Payment.* The Postal Service will review claims within 60 days of submission and approve or disapprove payment. Upon approval or partial approval of the displaced person's claim, the Postal Service will promptly authorize payment of the approved amount. The certification that the claimant has occupied decent, safe, and sanitary housing must be completed prior to final payment of replacement housing payments.

(e) *Relocation Payments Not Considered as Income.* Upon approval of the claim and delivery of the relocation payment, the displaced person must be advised that no relocation payment made under these procedures shall be considered as income for the purpose of the Internal Revenue Code of 1954, or for the purpose of determining the eligibility or the extent of eligibility of any person for assistance under the Social Security Act or any other Federal Law.

(f) *Certification.* Certification that a person is displaced will be provided any agency requiring such information to assist that person under any Federal law or program.

(g) *Advance of Funds.* If the displaced person cannot arrange for the acquisition of a replacement property because of financial problems and the problems would be solved by an advance of funds, the Postal Service may determine the estimated amount of the actual claim and authorize an advance of that amount or a portion thereof. The displaced person will be fully informed in writing that his or her final claim will then be subject to adjustment. Advance payments should not be made to persons with a history of financial irresponsibility.

(h) *Money Owed to the Postal Service.* In cases of Postal Service leasing the acquired property to a displaced persons, or in cases of advance moving cost payments, any monies due the Postal Service by the displaced person and not paid before the remainder of the relocation payments are made must be deducted from such payments and the relocation file so documented.

(i) *Notice of Denial of Claim.* If the Postal Service disapproves all or part of a payment claimed, of refuses to consider the claim on its merits because of untimely filing or other grounds, it must promptly notify the claimant in writing of the determination, the basis for the determination, and the procedures for appealing the determination.

(j) *Appeal Procedure.* If a displaced person wishes to file an appeal:

(1) The appeal must be in writing.

(2) The appeal must be directed to the General Manager, Real Estate Division, and must set forth the displaced person's reasons for the appeal. (The General Manager shall not have taken part in the decision which led to the appeal. Appeals misdirected to others must be forwarded immediately to the General Manager with notification of the forwarding to the appellant.)

(3) The appeal must be submitted within 60 days after the displaced person receives written notification of the Postal Service's original determination concerning the displacee's claim. The Postal Service may extend this time limit for good cause.

(k) *Right of Representation.* A displaced person has a right to be represented by legal counsel or other representative in connection with his or her appeal, but solely at the person's own expense.

(l) *Review of Files by Appellant.* The Postal Service must permit a person to inspect and copy all materials pertinent to his or her appeal, except materials which are confidential. Such inspection will be permitted as allowed under the Freedom of Information Act, 39 CFR Part 265.

(m) *Scope of Review.* In deciding an appeal, the Postal Service must consider all pertinent justification and other material submitted by the displaced person and all other available information that is needed to ensure a fair and full review of the appeal.

(n) *Determination and Notification After Appeal.* Promptly after receipt of all supporting information submitted by the appellant, the General Manager, Real Estate Division, must make a written determination on the appeal, including the basis on which the decision was made, and furnish the appellant a copy. If the full relief requested is not granted at the Service Center level, the General Manager, Real Estate Division, must advise the person of his or her right to appeal the decision to the Director, Office of

Real Estate. The rules stated here for appeals to the General Manager apply as well as to appeals to the Director, Office of Real Estate.

[51 FR 6983, Feb. 27, 1986, as amended at 54 FR 10668, Mar. 15, 1989]

Subpart C—Acquisition

§ 777.31 Acquisition procedures.

(a) *Policy; Application of Section.* The Postal Service, as a matter of policy, acquires interests in real property through voluntary agreements with owners. Only under unusual and compelling circumstances, and on a case-by-case basis, does the Postal Service acquire real property through the exercise or the threat of the exercise of eminent domain. This policy does not, however, prevent the Postal Service from occasionally entering into mutually agreeable condemnation proceedings with an owner, where price is not an issue, and for such purposes as to clear title or to acquire property from certain elected officials. For the purposes of this section, the Postal Service does not consider such voluntary and mutually agreeable uses of condemnation proceedings as the exercise or the threat of the exercise of eminent domain. The following regulations apply only to acquisitions by the exercise or the threat of the exercise of eminent domain:

(1) *Notice to Owner.* As soon as feasible after deciding to acquire a specific property through the exercise of eminent domain, the Postal Service must notify the owner of its intent to acquire the property.

(2) *Expeditious Negotiations.* The Postal Service must make every reasonable effort to acquire real property expeditiously by negotiation.

(3) *Appraisal and Invitation to Owner.* Before the initiation of negotiations, the real property shall be appraised in accordance with Postal Service appraisal standards as outlined in RE-1 and the owner or the owner's designated agent shall be given an opportunity to accompany the appraiser during the appraiser's inspection of the property.

(4) *Establishment of Offer of Just Compensation.* Prior to the initiation of negotiations (see § 777.13(k) for definition) the Postal Service must establish an amount which it believes is just compensation for the real property rights be acquired. The amount must not be less than the approved appraisal of the fair market value, including damages or benefits to the remaining property. Appraisers shall not give consideration to, or include in their real property appraisals, any allowances for the benefits provided by Title II of the Act.

(5) *Summary Statement.* Promptly after determining fair market value, the Postal Service shall make a written offer to acquire the property for the full amount believed to be just compensation. Along with the written purchase offer, the owner must be given a written statement of the basis for the offer of just compensation. This statement must include:

(i) A statement of the amount offered as just compensation. In the case of a partial acquisition, the compensation for the real property to be acquired and the compensation for damages, if any, must be separately stated.

(ii) The location and description of the real property and the interest(s) to be acquired.

(iii) An identification of the buildings, structures, and other improvements (including removable building equipment and trade fixtures) which are considered part of the real property for which the offer of just compensation is made. Where appropriate, the statement shall identify and separately held ownership interest in the improvement(s), for example, a tenant-owned improvement.

(6) *Basic Negotiation Procedures.* The Postal Service must make every reasonable effort to contact the owner or the owner's representative and:

(i) Discuss the Postal Service's offer to purchase the property including the basis for the offer of just compensation, and;

(ii) Explain Postal Service acquisition policies and procedures including the provisions for the payment of incidental expenses as described under § 777.33.

(7) *Opportunity to Consider Offer.* The owner must be given a reasonable opportunity to consider the Postal Service's offer, to present material

which he or she believes is relevant to determining the value of the property, and to suggest modification in the proposed terms and conditions of the purchase. The Postal Service must consider the owner's presentation.

(8) *Updating Offer of Just Compensation.* If the information presented by the owner or a material change in the character or condition of the property indicates the need for new appraisal information, or if a significant delay has occurred since the time of the appraisal(s) of the property, the Postal Service must have the appraisal(s) updated or obtain a new appraisal(s). If the latest appraisal information indicates that a change in the purchase offer is warranted, the Postal Service must promptly reestablish just compensation and offer the revised amount to the owner in writing.

(9) *Contracts and Options.* Contracts to purchase shall cover only those items related to the acquisition of the property, and not incorporate provisions for making payments for relocation costs or related costs under Title II of these regulations.

(10) *Title II Benefits Not To Be Considered.* In the event of condemnation, estimated compensation shall be determined solely on the basis of the appraised value of the real property with no consideration being given to or reference contained therein to the payments to be made under Title II.

(11) *Coercive Action.* The Postal Service shall not advance the time of condemnation, or defer negotiations or condemnation, or the deposit of funds with the court, or take any other coercive action in order to induce an agreement on the price to be paid for the property.

(12) *Inverse Condemnation.* If the Postal Service intends to acquire any interest in real property by exercise of the power of eminent domain, it must institute formal condemnation proceedings and not intentionally make it necessary for the owner to institute proceedings to prove the fact of the taking of the real property.

(13) *Payment Before Taking Possession.* Before requiring the owner to surrender possession of the real property, the Postal Service must either:

(i) Pay the agreed purchase price to the owner; or

(ii) In the case of a condemnation proceeding, deposit with the court for the benefit of the owner an amount not less than the amount of the approved appraised value of the property or the amount of the award of compensation in the condemnation proceeding for the property.

(14) *Right-of-Entry.* With the prior approval of the owner, the Postal Service may obtain a right-of-entry before making payment to the owner.

§ 777.32 Acquisition of tenant-owned improvements.

(a) *Acquisition of Improvements.* When acquiring any interest in real property, the Postal Service must acquire at least an equal interest in all buildings, structures, or other improvements located upon the real property. This must include any improvement of a tenant owner who has the right or obligation to remove the improvement at the expiration of the lease term.

(b) *Special Conditions.* Payment for tenant-owned improvements will be made to the tenant only if he or she meets the following conditions:

(1) In consideration for the payment the tenant-owner assigns, transfers, and releases to the Postal Service all of the tenant-owner's rights, title, and interests in the improvement;

(2) The owner of the real property on which the improvement is located disclaims all interest in the improvement; and

(3) The payment does not result in the duplication of any compensation otherwise authorized by law.

(c) *Preservation of Tenant's Rights.* Nothing in this section shall be construed to deprive the tenant-owner of any rights to reject payment under this section and to obtain payment for such property interests in accordance with other applicable law.

§ 777.33 Expenses incidental to transfer of title to the Postal Service.

(a) *Reimbursement.* When property is acquired through the exercise or the threat of the exercise of eminent domain, the owner shall be reimbursed for all reasonable expenses he or she necessarily incurred in conveying the real property to the Postal Service for:

(1) Recording fees, transfer taxes, documentary stamps, evidence of title, boundary surveys, legal descriptions of the real property, and similar incidental expenses. However, the Postal Service will not pay costs solely required to perfect the owner's title to the real property.

(2) Penalty costs and other charges for prepayment of any preexisting recorded mortgage, entered into in good faith, encumbering the real property.

(3) The pro rata portion of any prepaid real property taxes which are allocable to the period after the Postal Service obtains title to the property or effective possession of it, whichever is earlier.

(b) *Direct Payment.* Whenever feasible the Postal Service must pay these costs directly and thus avoid the need for an owner to pay such costs and then seek reimbursement from the Postal Service.

(c) *Certain Litigation Expenses.* The owner of the real property acquired must be reimbursed any reasonable expenses, including reasonable attorney, appraisal, and engineering fees which the owner actually incurred because of a condemnation proceeding if:

(1) The final judgment of the court is that the Postal Service cannot acquire the real property by condemnation; or

(2) The condemnation proceeding is abandoned by the Postal Service other than under an agreed-upon settlement; or

(3) The court having jurisdiction renders a judgment in favor of the owner in an inverse condemnation proceeding or the Postal Service effects a settlement of such a proceeding.

Subpart D—Voluntary Acquisitions

§ 777.41 Acquisition procedures.

(a) *Voluntary Acquisitions.* Acquisition rules for voluntary purchases are set out in Handbook RE-1, Realty Acquisition and Management and cover such areas as appraisal and negotiation procedures.

(b) *Tenant-Owned Improvements.* In general the Postal Service deals exclusively with the fee owner on the acquisition of all real property interest at the site. The Postal Service may, however, in exceptional cases deal directly with a tenant on a leasehold improvements matter. Should the Postal Service acquire the fee interest without acquiring rights in a leasehold improvement under circumstances in which the tenant would be entitled to compensation under § 777.32 of this part, if the acquisition were by eminent domain or the under threat thereof, the tenant will be entitled to the benefits that would, under such circumstances, have been paid under § 777.32 of this part, unless the tenant has formally disclaimed further right in the real property improvement beyond the time of the expiration of his or her tenancy.

Subpart E—Donations

§ 777.51 Acceptance of donations.

Nothing in these regulations shall prevent a person from making a gift or donation of real property or any part thereof, or any interest therein, or of any compensation paid therefor, to the Postal Service. The Postal Service may obtain an appraisal of the real property for income tax or other purposes if the owner thereof requests the Postal Service to do so.

PART 778—INTERGOVERNMENTAL REVIEW OF POSTAL SERVICE FACILITY ACTIONS

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AUTHORITY: 39 U.S.C. 401.

SOURCE: 48 FR 29376, June 24, 1983, unless otherwise noted.

§ 778.1 What is the purpose of these regulations?

(a) The regulations in this part implement Executive Order 12372, "Intergovernmental Review of Federal Programs," issued July 14, 1982 and amended on April 8, 1983. These regulations also implement applicable provisions of section 401 of the Intergovernmental Cooperation Act of 1968, which the Postal Service follows as a matter of policy.

(b) These regulations are intended to foster an intergovernmental partnership and a strengthened Federalism by relying on state processes and on state, areawide, regional and local coordination for review of proposed direct federal development projects.

(c) These regulations are not intended to create any right or benefit enforceable at law by a party against the Postal Service or its officers.

(d) These regulations implement Executive Order 12372 and are adopted under the Postal Reorganization Act rather than the statute and Executive Order listed in paragraph (a) of this section to the extent the statute and Executive Order do not apply to the Postal Service under 39 U.S.C. 410(a).

§ 778.2 What definitions apply to these regulations?

"Order" means Executive Order 12372, issued July 14, 1982, and amended April 8, 1983, and titled "Intergovernmental Review of Federal Programs."

"State" means any of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Islands, or the Trust Territory of the Pacific Islands.

§ 778.3 What categories of facility project actions of the Postal Service are subject to these regulations?

The Postal Service publishes in the FEDERAL REGISTER a list of its categories of facility project actions that are subject to these regulations.

§ 778.4 What are the Postal Service's general responsibilities under the Order?

(a) The Postal Service provides opportunities for consultation by elected officials of those state and local governments that would be directly affected by the Postal Service's facility project actions.

(b) If a state adopts a process under the Order to review and coordinate proposed direct Federal development projects, the Postal Service, to the extent permitted by law:

(1) Uses the state process to determine official views of state and local elected officials;

(2) Communicates with state and local elected officials as early in a facility project action's planning cycle as is reasonably feasible to explain specific plans and actions;

(3) Makes efforts to accommodate state and local elected officials' concerns with proposed direct Federal development projects that are communicated through the state process; and

(4)—(5) [Reserved]

(6) Seeks the coordination of views of affected state and local elected officials in one state with those of another state when a proposed direct Federal development project has an impact on interstate metropolitan urban centers or other interstate areas.

§ 778.5 What is the Postal Service's obligation with respect to federal interagency coordination?

The Postal Service, to the extent practicable, consults with and seeks advice from other federal departments and agencies substantially affected by Postal Service facility project actions covered under these regulations.

§ 778.6 What procedures apply to a state's choice of facility action categories under these regulations?

(a) A state may select any categories of facility project actions published in the FEDERAL REGISTER in accordance with § 778.3 for intergovernmental review under these regulations. Each state, before selecting categories of facility project actions, shall consult with local elected officials.

(b) Each state that adopts a process shall notify the Postal Service of the Postal Service's categories of facility actions selected for that process.

(c) A state may notify the Postal Service of changes in its selections at any time. For each change, the state shall submit to the Postal Service an assurance that the state has consulted with local elected officials regarding the change. The Postal Service may establish deadlines by which states are required to inform the Postal Service of changes in their facility action category selections.

(d) The Postal Service uses a state's process as soon as feasible, after the Postal Service is notified of the state's selections.

§ 778.7 How does the Postal Service communicate with state and local officials concerning the Postal Service's facility project actions?

(a) [Reserved]

(b) The Postal Service provides notice directly to affected state, areawide, regional, and local entities in a state of a proposed direct Federal development project if:

(1) The state has not adopted a process under the Order; or

(2) The development project involves a facility project action category not selected for the state process.

This notice may be made by publication in local newspapers and/or by letter.

§ 778.8 How does the Postal Service provide states an opportunity to comment on proposed facility project actions?

(a) Except in unusual circumstances, the Postal Service gives state processes or directly affected state, areawide, regional and local officials and entities:

(1) [Reserved]

(2) At least 60 days from the date established by the Postal Service to comment on proposed facility project actions (except as noted in paragraph (a)(3) of this section).

(3) For facility project actions in the Washington, DC National Capital Region, coordination also is accomplished with the National Capital Planning Commission (NCPC). The Postal Service gives the NCPC 90 days to comment on projects in the Maryland and Virginia portions of the National Capital Region.

(b) This section also applies to comments in cases in which the review, coordination, and communication with the Postal Service have been delegated.

§ 778.9 How does the Postal Service receive and respond to comments?

(a) The Postal Service follows the procedures in § 778.10 if:

(1) A state office or official is designated to act as a single point of contact between a state process and all federal agencies, and

(2) That office or official transmits a state process recommendation for a facility project action of a category selected under § 778.6.

(b)(1) The single point of contact is not obligated to transmit comments from state, areawide, regional or local officials and entities where there is no state process recommendation.

(2) If a state process recommendation is transmitted by a single point of contact, all comments from state, areawide, regional, and local officials and entities that differ from it must also be transmitted.

(c) If a state has not established a process, or does not submit a state process recommendation, state, areawide, regional and local officials and entities may submit comments directly to the Postal Service.

(d) If a facility project action is not selected for a state process, state, areawide, regional and local officials and entities may submit comments directly to the Postal Service. In addition, if a state process recommendation for a nonselected facility project action is transmitted to the Postal Service by the single point of contact, the Postal Service follows the procedures of § 778.10.

(e) The Postal Service considers comments which do not constitute a state process recommendation submitted under these regulations and for which the Postal Service is not required to apply the procedures of § 778.10 when such comments are provided by a single point of contact or directly to the Postal Service by a commenting party.

§ 778.10 How does the Postal Service make efforts to accommodate intergovernmental concerns?

(a) If a state process provides a state process recommendation to the Postal Service through its single point of contact, the Postal Service either:

(1) Accepts the recommendation;

(2) Reaches a mutually agreeable solution with the state process; or

(3) Provides the single point of contact with such written explanation of its decision as the Postal Service in its discretion deems appropriate. The Postal Service may also supplement the written explanation by providing the explanation to the single pont of contact by telephone, other telecommunication, or other means.

(b) In any explanation under paragraph (a)(3) of this section, the Postal Service informs the single point of contact that:

(1) The Postal Service will not implement its decision for at least ten days after the single point of contact receives the explanation; or

(2) The Postal Service has reviewed the decision and determined that because of unusual circumstances, the waiting period of at least ten days is not feasible.

(c) For purposes of computing the waiting period under paragraph (b)(1) of this section, a single point of contact is presumed to have received written notification 5 days after the date of mailing of such notification.

§ 778.11 What are the Postal Service's obligations in interstate situations?

(a) The Postal Service is responsible for:

(1) Identifying proposed direct federal development projects that have an impact on interstate areas;

(2) Notifying appropriate officials and entities in states which have adopted a process and which select the Postal Service's facility project action for review;

(3) Making efforts to identify and notify the affected state, areawide, regional, and local officials and entities in those states that have not adopted a process under the Order or do not select the Postal Service's facility project action for review;

(4) Responding pursuant to § 778.10 if the Postal Service receives a recommendation from a designated areawide agency transmitted by a single point of contact in cases in which the review, coordination, and communication with the Postal Service have been delegated.

(b) The Postal Service uses the procedures in § 778.10 if a state process provides a state process recommendation to the Postal Service through a single point of contact.

§ 778.12 [Reserved]

§ 778.13 May the Postal Service waive any provision of these regulations?

In an emergency, the Postal Service may waive any provision of these regulations.

SUBCHAPTERS L AND M—[RESERVED]

SUBCHAPTER N—PROCEDURES

Rules of Procedure Before the Office of General Counsel

PART 912—PROCEDURES TO ADJUDICATE CLAIMS FOR PERSONAL INJURY OR PROPERTY DAMAGE ARISING OUT OF THE OPERATION OF THE U.S. POSTAL SERVICE

Sec.

912.1 Claims responsibility.
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AUTHORITY: 28 U.S.C. 2671-2680; 28 CFR 14.1 through 14.11; 39 U.S.C. 409.

§ 912.1 Claims responsibility.

The General Counsel is responsible for settlement of claims made against the U.S. Postal Service under the Federal Tort Claims Act and 39 U.S.C. 2603, with authority to redelegate the functions to General Counsel staff members and other Postal Service employees.

[36 FR 12446, June 30, 1971]

§ 912.2 Applicability of Federal Tort Claims Act.

(a) The provisions of Chapter 171 and all other provisions of title 28, U.S.C., relating to tort claims shall apply to tort claims arising out of the activities of the Postal Service. (39 U.S.C. 409(c)).

(b) Where the General Counsel, or his designee, finds a claim for damage to persons or property resulting from operation of the U.S. Postal Service to be a proper charge against the United States and it is not cognizable under 28 U.S.C. 2672, he may adjust and settle it under authority of 39 U.S.C. 2603.

[45 FR 43719, June 30, 1980]

§ 912.3 Time limit for filing.

(a) *Claim.* A claim under the Federal Tort Claims Act must be presented within two years from the date the claim accrues.

(b) *Suit.* Suit must be filed within six months after the date of mailing by certified or registered mail of notice of final denial of the claim by the Postal Service.

[45 FR 43720, June 30, 1980]

§ 912.4 Place of filing.

A claim is usually filed with the postmaster of the office within the delivery limits of where the accident happened, but may be filed at any office of the Postal Service, or sent directly to the Assistant General Counsel, Claims Division, U.S. Postal Service, Washington, DC 20260.

[45 FR 43720, June 30, 1980]

§ 912.5 Administrative claim; when presented.

(a) For purposes of this part, a claim shall be deemed to have been presented when the U.S. Postal Service receives from a claimant, his duly authorized agent or legal representative, an executed Standard Form 95, Claim for Damage or Injury, or other written notification of an incident, accompanied by a claim for money damages in a sum certain for injury to or loss of property, personal injury, or death alleged to have occurred by reason of the incident. Standard Form 95 may be obtained from postmaster, postal inspectors, or other local Postal Service establishments.

(b) A claim presented in compliance with paragraph (a) of this section may be amended by the claimant at any time prior to final Postal Service action or prior to the exercise of the claimant's option under 28 U.S.C. 2675(a). A claim may not be amended after the Postal Service has issued payment of the full amount of the claim or has issued a written denial of the claim in accordance with § 912.9. Amendments shall be submitted in writing and signed by the claimant or his duly authorized agent or legal representative. Upon the timely filing of an amendment to a pending claim, the Postal Service shall have six months in which to make final disposition of the claim as amended, and the claimant's option under 28 U.S.C. 2675(a) shall not accrue until six months after the filing of an amendment.

[36 FR 12448, June 30, 1971, as amended at 45 FR 43720, June 30, 1980]

§ 912.6 Administrative claim; who may file.

(a) A claim for injury to or loss of property may be presented by the owner of the property, his duly authorized agent, or legal representative.

(b) A claim for personal injury may be presented by the injured person, his duly authorized agent, or legal representative.

(c) A claim based on death may be presented by the executor or administrator of the decedent's estate, or by any other person legally entitled to assert such a claim in accordance with applicable State law.

(d) A claim for loss wholly compensated by an insurer with the rights of a subrogee may be presented by the insurer. A claim for loss partially compensated by an insurer with the rights of a subrogee may be presented by the parties individually as their respective interests appear, or jointly.

(e) A claim presented by an agent or legal representative shall be presented in the name of the claimant, be signed by the agent or legal representative, show the title or legal capacity of the person signing, and be accompanied by evidence of his authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian, or other representative.

[36 FR 12448, June 30, 1971, as amended at 45 FR 43720, June 30, 1980]

§ 912.7 Evidence and information to be submitted.

(a) *Death.* In support of a claim based on death, the claimant may be required to submit the following evidence or information:

(1) An authenticated death certificate or other competent evidence showing cause of death, date of death, and age of the decedent.

(2) Decedent's employment or occupation at time of death, including monthly or yearly salary or earnings, if any, and the duration of his last employment or occupation.

(3) Full names, addresses, birth dates, kinship, and marital status of the decedent's survivors, including identification of those survivors who were dependent for support upon the decedent at the time of his death.

(4) Degree of support afforded by the decedent to each survivor dependent upon him for support at the time of his death.

(5) Decedent's general physical and mental condition before death.

(6) Itemized bills for medical and burial expenses incurred by reason of the incident causing death, or itemized receipts of payment for such expenses.

(7) If damages for pain and suffering prior to death are claimed, a physician's detailed statement specifying the injuries suffered, duration of pain and suffering, any drugs administered for pain, and the decedent's physical condition in the interval between injury and death.

(8) Any other evidence or information which may have a bearing on either the responsibility of the United States for the death or the damages claimed.

(b) *Personal injury.* In support of a claim for personal injury, including pain and suffering, the claimant may be required to submit the following evidence or information:

(1) A written report by his attending physician or dentist setting forth the nature and extent of the injury, nature and extent of treatment, any degree of temporary or permanent disability, the prognosis, period of hospitalization, and any diminished earning capacity. In addition, the claimant may be required to submit to a physi-

cal or mental examination by a physician employed by the agency or another Federal agency. A copy of the report of the examining physician shall be made available to the claimant upon the claimant's written request, provided that he has, upon request, furnished the report referred to in the first sentence of this paragraph and has made, or agrees to make available to the agency or another Federal agency. A copy previously or thereafter made of the physical or mental condition which is the subject matter of his claim.

(2) Itemized bills for medical, dental, and hospital expenses incurred, or itemized the report referred to in the first expenses.

(3) If the prognosis reveals the necessity for future treatment, a statement of expected expenses for such treatment.

(4) If a claim is made for loss of time for employment, a written statement from his employment, whether he is a full- or part-time employee, and wages or salary actually lost.

(5) If a claim is made for loss of income and the claimant is self-employed, documentary evidence showing the amount of earnings actually lost.

(6) Any other evidence or information which may have a bearing on either the responsibility of the United States for the personal injury or the damages claimed.

(c) *Property damage.* In support of a claim for injury to or loss of property, real or personal, the claimant may be required to submit the following evidence or information:

(1) Proof of ownership.

(2) A detailed statement of the amount claimed with respect to each item of property.

(3) An itemized receipt of payment for necessary repairs or itemized written estimates of the cost of such repairs.

(4) A statement listing date of purchase, purchase price and salvage value, where repair is not economical.

[36 FR 12449, June 30, 1971]

§ 912.8 Sufficiency of evidence and information submitted.

In order to exhaust the administrative remedy provided, a claimant shall submit substantial evidence to prove the extent of any losses incurred and any injury sustained, so as to provide the Postal Service with sufficient evidence for it to properly evaluate the claim.

[45 FR 43720, June 30, 1980]

§ 912.9 Final denial of claim.

(a) Final denial of an administrative claim shall be in writing and sent to the claimant, his attorney, or legal representative by certified or registered mail. The notification of final denial may include a statement of the reasons for the denial and shall include a statement that, if the claimant is dissatisfied with the agency action, he may file suit in an appropriate U.S. District Court not later than 6 months after the date of mailing of the notation.

(b) Prior to the commencement of suit and prior to the expiration of the 6 month period provided in 28 U.S.C. 2401(b), a claimant, his duly authorized agent, or legal representative, may file a written request with the postal official who issued the final denial or with the Assistant General Counsel, Claims Division, U.S. Postal Service, Washington, DC 20260, for a reconsideration of a final denial of a claim under paragraph (a) of this section. Upon the timely filing of a request for reconsideration, the Postal Service shall have 6 months from the date of filing in which to make a disposition of the claim and the claimant's option under 28 U.S.C. 2675(a) shall not accrue until 6 months after the filing of a request for reconsideration. Final Postal Service action on a request for reconsideration shall be effected in accordance with this part.

(c) For purposes of this section, a request for reconsideration of a final denial of a claim shall be deemed to have been filed when received in the office of the official who issued the final denial or in the office of the Assistant General Counsel, Claims Division, U.S. Postal Service, Washington, DC 20260-1111.

(d) Only one request for reconsideration of a final denial may be filed. A claimant shall have no right to file a request for reconsideration of a final denial issued in response to a request for reconsideration.

(28 U.S.C. 2671-2680; 28 CFR 14.1-14.11; 39 U.S.C. 401, 409, 2008)

[36 FR 12448, June 30, 1971, as amended at 38 FR 16868, June 27, 1973; 49 FR 19478, May 8, 1984]

§ 912.10 Action on approved claims.

In any case where the General Counsel or his designee, upon consideration of all the evidence submitted, finds that compensation is due a claimant, payment will be made by the U.S. Postal Service and in due course a settlement check will be forwarded to the claimant or his representative.

[36 FR 12450, June 30, 1971]

§ 912.11 Exclusiveness of remedy.

The provisions of 28 U.S.C. 2679(b) provide that the remedy against the United States, as provided by sections 1346(b) and 2672 of Title 28, for injury or loss or personal injury or death resulting from the operation by an employee of the Government of any motor vehicle while acting within the scope of his employment is exclusive of any other civil action or proceeding by reason of the same subject matter against the employee or his estate whose act or omission gave rise to the claim.

[45 FR 43720, June 30, 1980]

§ 912.12 Review by legal officers.

The authority of the Postal Service to adjust, determine, compromise, and settle a claim under the provisions of the Federal Tort Claims Act shall, if the amount of a proposed compromise, settlement, or award exceeds $2,500, be exercised only after review by a legal officer of the Postal Service.

[45 FR 43720, June 30, 1980]

§ 912.13 Attorneys' fees.

The provisions of 28 U.S.C. 2678 should be consulted in determining the amount of the attorneys' fees.

[36 FR 12448, June 30, 1971. Redesignated at 45 FR 43720, June 30, 1980]

§ 912.14 Conclusiveness of remedy.

Payment by the Postal Service of the full amount claimed or acceptance by the claimant, his agent, or legal representative, of any award, compromise, or settlement made pursuant to the provisions of the Federal Tort Claims Act, shall be final and conclusive on the claimant, his agent, or legal representative, and any other person on whose behalf or for whose benefit the claim has been presented, and shall constitute a complete release of any claim against the United States and against any employee of the Government whose act or omission gave rise to the claim by reason of the same subject matter.

[45 FR 43720, June 30, 1980]

PART 916—[RESERVED]

Rules of Procedure Before the Mail Processing Department

PART 927—RULES OF PROCEDURE RELATING TO FINES, DEDUCTIONS, AND DAMAGES

Sec.
927.1 Noncontractual carriage of mail by vessel.
927.2 Noncontractual air service.
927.3 Other remedies.

Authority: 39 U.S.C. 401, 2601, 5401-5403, 5603, 5604; 49 U.S.C. 1375, 1471.

Source: 45 FR 12418, Feb. 26, 1980, unless otherwise noted.

§ 927.1 Noncontractual carriage of mail by vessel.

(a) *Report of infraction.* Where evidence is found or reported that a carrier of mail by vessel which has transported or been required to transport mail pursuant to the provisions of section 19-504, Postal Contracting Manual or 39 U.S.C. 5603, has failed or refused to transport the mail when required to do so, has unreasonably or unnecessarily delayed the mails, has committed other delinquencies in the transportation of mail, has failed to carry the mail in a safe and secure manner, or has caused loss or damage to the mail, the facts will be reported to the General Manager, Logistics Division, of the region in which the mail was dispatched or received or was required to be dispatched or received.

(b) *Review, investigation, recommendation.* The General Manager, Logistics Division, will investigate the matter. The Manager will record findings of fact and make a recommendation concerning the need for imposition of fine or penalty with the reasons for the recommendation. The Manager will then forward the file to the Director, Office of Transportation and International Services, and will advise the carrier of the recommendation.

(c) *Penalty action.* The Director, Office of Transportation and International Services, upon review of the record, may impose a fine or penalty against a carrier for any irregularity properly documented, whether or not penalty action has been recommended. A tentative decision of the Director, Office of Transportation and International Services, to take penalty action will set forth in detail the facts and reasons upon which the determination is based. The Director will send the tentative decision, including notice of the irregularities found and the amount of fine or penalty proposed, to the carrier. The carrier may present a written defense to the proposed action within 30 days after receipt of the tentative decision. The Director, after review of the record, will advise the carrier of the final decision.

(d) *Appeal.* If the final decision includes a penalty, the Director will advise the carrier that it may, within 30 days, appeal the action in writing to the Assistant Postmaster General, Mail Processing Department, U.S. Postal Service, and that its written appeal should include all facts and arguments upon which the carrier relies in support of the appeal. If an appeal is not received, the Director will close the record. When an appeal is taken, the Assistant Postmaster General, Mail Processing Department, will review the complete record and decide the appeal. He will advise the carrier of the decision in writing and will take action consistent with that decision. The Assistant Postmaster General, Mail Processing Department, may sustain, rescind, or compromise a fine or penalty. The decision of the Assistant Postmaster General, Mail Processing Department, on appeal shall be the final decision of the Postal Service. The Postal Service may, in its discretion, deduct from pay otherwise due the carrier an amount necessary to satisfy the penalty action taken under this section.

(e) *Details of administration.* For further administrative details, see section 19-504, Postal Contracting Manual (Publication 41).

[45 FR 12418, Feb. 26, 1980, as amended at 51 FR 6914, Feb. 27, 1986]

§ 927.2 Noncontractual air service.

(a) *Report of infraction.* Each mail handling irregularity will be reported on a prescribed form by the cognizant postal official or designated representative. As soon as possible the reporting authority will ask the local representative of the air carrier to provide an explanation of the irregularity. A summary of the explanation, if any, will be entered on the form. A copy of the form will be provided to the local station manager of the carrier concerned at the close of each tour and not less frequently than each 24 hours.

(b) *Carrier conferences.* At least once per month, postal officials will schedule a meeting with the local representatives of the affected air carriers to discuss the reported irregularities. The carrier's representative will be advised of any irregularity for which the reporting authority will recommend penalty action. The carrier's representative will be offered the opportunity to comment on any irregularity, and any comments will be attached to the form. The form on which penalty action is recommended will then be forwarded to the General Manager, Logistics Division, of the appropriate postal region.

(c) *Review, investigation, recommendation.* The General Manager, Logistics Division, will review the matter. In those instances in which a monetary fine or penalty appears warranted but the carrier has disputed the facts alleged by the reporting authority, the General Manager, Logistics Division, will investigate the matter to resolve the differences. The Manager will record findings of fact and make a recommendation concerning the need for imposition of a fine or penalty, with the reasons for the recommendation. The Manager will then forward the file to the Director, Office of Transportation and International Services, U.S. Postal Service, and will advise the carrier of the recommendation.

(d) *Penalty action.* The Director, Office of Transportation and International Services, upon review of the record, may impose a fine or penalty against an air carrier for any irregularity properly documented, whether or not penalty action has been recommended. A tentative decision of the Director, Office of Transportation and International Services, to take penalty action will set forth in detail the facts and reasons upon which the determination is based. The Director will send the tentative decision, including notice of the irregularities alleged and the amount of fine or penalty proposed, to the carrier. The carrier may present a written defense to the proposed action within 30 days after the receipt of the tentative decision. The Director, after review of the record, will advise the carrier of the final decision.

(e) *Appeal.* If the final decision includes a penalty, the Director will advise the carrier that it may, within 30 days, appeal the action in writing to the Assistant Postmaster General, Mail Processing Department, U.S. Postal Service, and that its written appeal should include all facts and arguments upon which the carrier relies in support of the appeal. If an appeal is not received, the Director will close the file. When an appeal is taken, the Assistant Postmaster General, Mail Processing Department, will review the complete record and decide the appeal. He will advise the carrier of the decision in writing and will take action consistent with that decision. The Assistant Postmaster General, Mail Processing Department, may sustain, rescind, or compromise a fine or penalty. The decision of the Assistant Postmaster General, Mail Processing Department, on appeal shall be the final decision of the Postal Service. The Postal Service may, in its discretion, deduct from pay otherwise due the air carrier an amount necessary to satisfy the penalty action taken under the section.

(f) *Details of administration.* For further administrative details, forms, and other implementing materials adapted to the respective modes of transportation, see Transportation Handbook T-1, International Airmail, Exchange Office Procedures, Part 4, for foreign air transportation; and Transportation Handbook T-7, Handling, Dispatch, and Transportation of Military Mail, Part 10, for overseas air transportation.

[45 FR 12418, Feb. 26, 1980, as amended at 51 FR 6914, Feb. 27, 1986]

§ 927.3 Other remedies.

The procedures and other requirements of this part apply only where the Postal Service proposes to assess penalties, fines, deductions, or damages. This part does not limit other remedies available to the Postal Service, including such remedies as summary action to withhold tender of the mail to protect the public interest in the event of major irregularities such as theft, deliberate loss, damage, or abandonment of the mail.

PART 931—RULES OF PROCEDURE GOVERNING THE COMPROMISE OF OBLIGATIONS

§ 931.1 Compromise of obligations.

Any proposition of compromise shall be submitted in writing, and the amount offered in compromise shall be deposited with the Manager, Accounting Division or the appropriate postal data center. If the offer in compromise is rejected the amount deposited will be returned. The amount of a compromise offer must be tendered unconditionally for deposit pending the consideration of acceptance. Checks and drafts cannot be accepted as offers in compromise when they bear endorsements or instructions to the effect that the acceptance of such checks or drafts constitutes settlement in full of the claim, fine, penalty, or liability in connection with which the offer is made, except that such checks or drafts may be accepted when they are accompanied with a written waiver of the endorsements or instructions printed thereon. Offers in compromise should be transmitted or delivered to the office or officer of the Postal Service from whom demand is received for payment of the amount due.

(39 U.S.C. 401)

[26 FR 11662, Dec. 6, 1961. Redesignated at 33 FR 6291, April 25, 1968]

Rules of Procedure Before the Postal Inspection Service

PART 946—RULES OF PROCEDURE RELATING TO THE DISPOSITION OF STOLEN MAIL MATTER AND PROPERTY ACQUIRED BY THE POSTAL INSPECTION SERVICE FOR USE AS EVIDENCE

Sec.

946.1 Scope of part.
946.2 Disposition of property of apparent owners.
946.3 Contraband and property subject to court order.
946.4 Disposition of property of unknown owners.
946.5 Disposition of property having a value of less than $200.
946.6 Disposition of abandoned property; additional period for filing claims.
946.7 Submission of claims.
946.8 Determination of claims.
946.9 Reconsideration of claims.
946.10 Record retention.
946.11 Proceeds of sale.

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401(2), (5), (8), 404(a)(7), 2003, 3001.

Source: 53 FR 6986, March 4, 1988, unless otherwise noted.

§ 946.1 Scope of part.

This part prescribes procedures governing the disposition of recovered stolen mail matter and any other property (real, personal, tangible or intangible) obtained by the Postal Inspection Service for possible use as evidence after the need to retain such property no longer exists. Property obtained by Postal Inspectors which appears to have been loose in the mails but is not retained for use as evidence, except unlawful matter, must be treated in accordance with postal regulations concerning disposition of dead mail (see Domestic Manual (DMM) 159.4). Unlawful matter must be disposed of in accordance with § 946.3.

§ 946.2 Disposition of property of apparent owners.

Where an apparent owner of property subject to this part is known, the Chief Postal Inspector or delegate will mail, by certified mail to the apparent owner's last known address, written notice describing the property and the procedure for filing a claim for its return (see §§ 946.3 and 946.7). Such claims must be filed within 30 days from the date the notice is postmarked. If the apparent owner of the property fails to file a timely claim, the property is considered abandoned and must be disposed of as provided in § 946.6.

§ 946.3 Contraband and property subject to court order.

Claims submitted with respect to property subject to this part, possession of which is unlawful, must be denied, in writing, by certified mail and the person submitting the claim must be accorded 45 days from the postmarked date to institute judicial proceedings to challenge the denial. If judicial proceedings are not instituted within 45 days, or any extension of time for good cause shown, the contraband property must be destroyed unless the Chief Postal Inspector or delegate determines that it should be placed in official use by the Postal Inspection Service. Property subject to this part, the disposition of which is involved in litigation or is subject to an order of court, must be disposed of as determined by the court.

§ 946.4 Disposition of property of unknown owners.

(a) Where no apparent owner of property subject to this part is known, except property described in § 946.3, and the Chief Postal Inspector or delegate estimates that the fair market value of the property exceeds $200, and the property is not needed as evidence, the Chief Postal Inspector or delegate must publish notice providing the following information:

(1) A description of the property including model or serial numbers, if known;

(2) The name, address, and telephone number of the Postal Inspector

in Charge who has custody of the property; and

(3) A statement inviting any person who believes that he or she is fully entitled to the property to submit a claim for its return with the Postal Inspector in Charge who is identified in the notice. Such claim must be submitted within 30 days from the date of first publication of the notice (See § 946.7).

(b) The notice under § 946.4(a) must be published once a week for three consecutive weeks in a publication of general circulation within the judicial district where the Postal Inspection Service took possession of the property.

§ 946.5 Disposition of property having a value of less than $200.

Where the owner of property subject to this part is unknown and the Chief Postal Inspector or delegate estimates that fair market value of such property is $200 or less, title to the property vests in the United States Postal Service, subject to the right of the owner to submit a valid claim as provided in § 946.6.

§ 946.6 Disposition of abandoned property; additional period for filing claims.

(a) Upon expiration of the time provided in §§ 946.2 and 946.4(a)(3) for the filing of claims or any extension thereof, and without the receipt of a timely claim, the property described in the notice is considered abandoned and becomes the property of the United States Postal Service. However, if the owner satisfies the requirements of § 946.6(b), except for property described in § 946.3, such abandoned property must be returned to the owner if a valid claim is filed within 3 years from the date the property became abandoned, with the following qualifications:

(1) Where property has been placed in official use by the Postal Inspection Service, a person submitting a valid claim under this section must be reimbursed the fair market value of the property at the time title vested in the United States Postal Service, less costs incurred by the Postal Service in returning or attempting to return such property to the owner and;

(2) Where property has been sold, a person submitting a valid claim under this section must be reimbursed the amount of proceeds realized from the sale of such property less costs incurred by the Postal Service in selling the property and in returning or attempting to return such property to the owner.

(b) In order to present a valid claim under § 946.6(a), the claimant must establish that he or she had no actual or constructive notice prior to the date the property became abandoned that he or she was entitled to file a claim pursuant to § 946.2 or § 946.4. Publication of notice pursuant to § 946.4 provides constructive notice unless a claimant can demonstrate circumstances which reasonably precluded his access to the published notice.

§ 946.7 Submission of claims.

Claims submitted pursuant to this part must be submitted on Postal Service Form 1503 which may be obtained from the Inspector in Charge who has custody of the property.

§ 946.8 Determination of claims.

Upon receipt of a claim under this part, the Postal Inspection Service must conduct an investigation to determine the merits of the claim. The results of the investigation must be submitted to the Chief Postal Inspector or delegate who must approve or deny the claim by written decision, a copy of which must be forwarded to the claimant by certified mail. If the claim is approved, the procedures to be followd by the claimant to obtain return of the property, or its determined value, must be stated. If the claim is denied, the decision must state the reasons therefor.

§ 946.9 Reconsideration of claims.

A written request for reconsideration of denied claims may be submitted within 10 days of the postmarked date of the mailing denying the claim. Such requests must be addressed to the Chief Postal Inspector or delegate and must be based on evidence recently developed or not previously presented.

§ 946.10 Record retention.

Records regarding property subject to this part will be retained for a period of 3 years following return of the property to its owner or a determination that the property is abandoned.

§ 946.11 Proceeds of sale.

Proceeds from the sale of property subject to this part must be deposited in the fund established by 39 U.S.C. 2003 as miscellaneous receipts.

PART 951—PROCEDURE GOVERNING THE ELIGIBILITY OF PERSONS TO PRACTICE BEFORE THE POSTAL SERVICE

Sec.
951.1 Authority for rules.
951.2 Eligibility to practice.
951.3 Persons ineligible for admission to practice.
951.4 Authorization of appearance may be required.
951.5 Complaint of misconduct.
951.6 Censure, suspension or disbarment; grounds.
951.7 Notice of disbarment; exclusion from practice.
951.8 Ex parte communications.

AUTHORITY: 39 U.S.C. 204, 401.

SOURCE: 36 FR 11562, June 16, 1971, unless otherwise noted.

EDITORIAL NOTE: For nomenclature changes to this part, see 37 FR 23422, Nov. 3, 1972.

§ 951.1 Authority for rules.

The Judicial Officer promulgates these rules pursuant to authority delegated by the Postmaster General.

§ 951.2 Eligibility to practice.

(a) Any individual who is a party to any proceeding before the Judicial Officer, the Board of Contract Appeals or an Administrative Law Judge may appear for himself or by an attorney at law.

(b) The head of any department of the Postal Service may establish such special rules and regulations pertaining to eligibility to practice before such department as he may deem to be necessary or desirable.

(c) Generally, except as provided in § 951.3, any attorney at law who is a member in good standing of the Bar of the Supreme Court of the United States or of the highest court of any State, District, Territory, Protectorate or Possession of the United States, or of the District of Columbia, and is not under any order of any court or executive department of one of the foregoing governmental entities suspending, enjoining, restraining, disbarring, or otherwise restricting him in the practice of law may represent others before the U.S. Postal Service.

(d) When any person acting in a representative capacity appears in person or signs a paper in practice before the Postal Service his personal appearance or signature shall constitute a representation to the Postal Service that under the provisions of this part and the law he is authorized and qualified to represent the particular party in whose behalf he acts. The Postal Service does not generally take formal action or issue any certificate to show that an individual is eligible to practice before it. (See § 951.4.)

§ 951.3 Persons ineligible for admission to practice.

(a) No person disbarred from practice before the Postal Service or in any other executive department of any of the governmental entities mentioned in § 951.2(c) will be eligible to practice before the Postal Service until said order of disbarment shall have been revoked.

(b) Any person who, subsequently to being admitted to practice before the Postal Service, is disbarred by any governmental entity mentioned in § 951.2(c) shall be deemed suspended from practice before the Postal Service during the pendency of said order or disbarment.

(c) No person who has been an attorney, officer, clerk, or employee in the Postal Service will be recognized as attorney for prosecuting before it or any office thereof any case or matter which he was in anywise connected while he was such attorney, officer, clerk, or employee.

(d) No person coming within the prohibitions of 18 U.S.C. 203, 205, or 207, will be recognized as attorney before the Postal Service or any office thereof.

§ 951.4 Authorization of appearance may be required.

The Judicial Officer, the head of any department of the Postal Service or any Administrative Law Judge may require any person to present satisfactory evidence of his authority to represent the person for whom he appears.

§ 951.5 Complaint of misconduct.

(a) If the head of any department of the Postal Service has reason to believe, or if complaint be made to him, that any person is guilty of conduct subjecting him to suspension or disbarment, the head of such office shall report the same to the Judicial Officer.

(b) Whenever any person submits to the Judicial Officer a complaint against any person who has practiced, is practicing or holding himself out as entitled to practice before the Postal Service, the Judicial Officer may refer such complaint to the Chief Inspector for a complete investigation and report.

(c) At any time, the Judicial Officer may refer the complaint to the General Counsel for the preparation of formal charges to be lodged against and served upon the person against whom the complaint has been made.

§ 951.6 Censure, suspension or disbarment; grounds.

(a) The Judicial Officer may censure, suspend or disbar any person against whom a complaint has been made and upon whom charges have been served as provided in § 951.5 if he finds that such person:

(1) Does not possess the qualifications required by § 951.2;

(2) Has failed to conform to standards of ethical conduct required of practitioners at the Bar of any court of which he is a member;

(3) Represents, as an associate, an attorney who, known to him, solicits practice by means of runners or other unethical methods;

(4) By use of his name, personal appearance, or any device, aids or abets an attorney to practice during the period of his suspension or disbarment, such suspension or disbarment being known to him;

(5) Displays toward the Judicial Officer, Board of Contract Appeals or any Administrative Law Judge assigned to the Postal Service, conduct which, if displayed toward any court of any State, the United States, any of its Territories or the District of Columbia, would be cause for censure, suspension or disbarment; or

(6) Is otherwise guilty of misconduct or lacking in character or professional integrity.

(b) Before any person shall be censured, suspended or disbarred, he shall be afforded an opportunity to be heard by the Judicial Officer on the charges made against him. The General Counsel or his designee shall prosecute such cases.

(c) In the event the Judicial Officer is unavailable for any reason, he may assign complaints of misconduct to the Associate Judicial Officer, an Administrative Law Judge appointed pursuant to the provisions of the Administrative Procedure Act, an Administrative Judge appointed pursuant to the provisions of the Contract Disputes Act of 1978, or some other disinterested member of the headquarters staff of the Postal Service recommended by the Deputy Postmaster General, for the determinations required by § 951.5, the conduct of the hearings, and the decision to censure, suspend, or debar persons as provided herein.

[36 FR 11562, June 16, 1971, as amended at 51 FR 16517, May 5, 1986]

§ 951.7 Notice of disbarment; exclusion from practice.

Upon the disbarment of any person, notice thereof will be given to the heads of the departments of the Postal Service and to the other Executive Departments, and thereafter, until otherwise ordered, such disbarred persons will not be entitled to practice before the Postal Service or any department thereof.

§ 951.8 Ex parte communications.

The provisions of 5 U.S.C. 551(14), 556(d) and 557(d) prohibiting ex parte communications are made applicable to proceedings under these rules of practice.

[42 FR 5357, Jan. 28, 1977]

PART 952—RULES OF PRACTICE IN PROCEEDINGS RELATIVE TO FALSE REPRESENTATION AND LOTTERY ORDERS

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AUTHORITY: 39 U.S.C. 204, 401, 3005.

SOURCE: 36 FR 11563, June 16, 1971, unless otherwise noted.

EDITORIAL NOTE: For nomenclature changes to this part, see 37 FR 23422, Nov. 1, 1972.

§ 952.1 Authority for rules.

These rules of practice are issued by the Judicial Officer of the U.S. Postal Service (See § 952.26) pursuant to authority delegated by the Postmaster General.

§ 952.2 Scope of rules.

These rules of practice shall be applicable in all formal proceedings before the Postal Service, 39 U.S.C. 3005, including such cases instituted under prior rules of practice pertaining to these or predecessor statutes, unless timely shown to be prejudicial to the respondent.

[36 FR 11563, June 16, 1971, as amended at 52 FR 36763, Oct. 1, 1987]

§ 952.3 Informal dispositions.

These rules do not preclude the disposition of any matter by agreement between the parties either before or after the filing of a complaint when time, the nature of the proceeding, and the public interest permit.

§ 952.4 Office business hours.

The offices of the officials mentioned in these rules are located at the Headquarters of the U.S. Postal Service, 475 L'Enfant Plaza, West, SW., Washington, DC 20260, and are open Monday through Friday except holidays from 8:15 a.m. to 4:45 p.m.

[38 FR 17216, June 29, 1973, as amended at 42 FR 7955, Feb. 8, 1977]

§ 952.5 Complaints.

When the General Counsel of the Postal Service or his designated representative believes that a person is using the mails in a manner requiring formal administrative action under 39 U.S.C. 3005, he shall prepare and file with the Recorder a complaint which names the person involved; states the name, address and telephone number of the attorney representing Complainant; states the legal authority and jurisdiction under which the proceeding is initiated; states the facts in a manner sufficient to enable the person named therein to make answer thereto; and requests the issuance of an appropriate order or orders. Complainant shall attach to the complaint a copy of the order or orders requested which may, at any time during the proceedings, be modified. The person named in the complaint shall be know as the "Respondent", and the General Counsel shall be known as the "Complainant."

The term "person" (1 U.S.C. 1) shall include any name, address, number or other designation under or by use of which the Respondent seeks remittances of money or property through the mail.

[48 FR 55126, Dec. 9, 1983]

§ 952.6 Interim impounding.

In preparation for or during the pendency of a proceeding initiated under 39 U.S.C. 3005, mail addressed to a respondent may be impounded upon obtaining an appropriate order from a U.S. District Court, as provided in 39 U.S.C. 3007.

§ 952.7 Notice of answer and hearing.

(a) When a complaint is filed against a Respondent whose mailing address is within the United States, the Recorder shall issue a notice of answer and hearing stating the date for filing an answer which shall not exceed 15 days from the service of the complaint, the time and place of the hearing and a reference to the effect of failure to file an answer or appear at the hearing. (*See* §§ 952.10 and 952.11.) Whenever practicable, the hearing date shall be within 30 days of the date of the notice.

(b) Where a complaint is filed against a Respondent whose mailing address is not within the United States, the Judicial Officer shall review the complaint and any supporting information and determine whether a prima facie showing has been made that Respondent is engaged in conduct warranting issuance of the orders authorized by 39 U.S.C. 3005(a). Where he concludes that a prima facie showing has not been made he shall dismiss the complaint. Where he concludes that a prima facie showing has been made, he shall issue a tentative decision and orders which: set forth findings of fact and conclusions of law; direct Respondent to cease and desist from engaging in conduct warranting the issuance of an order authorized by 39 U.S.C. 3005(a); direct that postal money orders drawn to the order of Respondent not be paid for 45 days from date of the tentative decision; direct that mail addressed to Respondent be forwarded to designated facilities and detained for 45 days from the date of the tentative decision subject to survey by Respondent and release of mail unrelated to the matter complained of; and provide that unless Respondent presents, within 45 days of the date of the tentative decision, good cause for dismissing the complaint, or modifying the tentative decision and orders, the tentative decision and orders shall become final. The Judicial Officer may, upon a showing of good cause made within 45 days of the date of the tentative decision, hold a hearing to determine whether the tentative decision and orders should be revoked, modified or allowed to become final. Should a hearing be granted, the Judicial Officer may modify the tentative decision and orders to extend the time during which the payment of postal money orders payable to Respondent is suspended and mail addressed to Respondent is detained.

[44 FR 61959, Oct. 29, 1979, as amended at 48 FR 55126, Dec. 9, 1983]

§ 952.8 Service.

(a) Where the Respondent's mailing address is within the United States, the Recorder shall cause a notice of answer and hearing and a copy of the complaint to be transmitted to the postmaster at any office of address of the Respondent or to the inspector in charge of any division in which the Respondent is doing business, which shall be delivered to the Respondent or his agent by said postmaster or a supervisory employee of his post office or a postal inspector. A receipt acknowledging delivery of the notice shall be secured from the Respondent or his agent and forwarded to the Recorder, U.S. Postal Service, Washington, DC 20260, to become a part of the official record.

(b) If, after 5 days, the postmaster or his agent can find no person to accept service of the notice of answer and hearing and complaint pursuant to paragraph (a) of this section, the notice may be delivered in the usual manner as other mail addressed to the respondent. A statement, showing the time and place of delivery, signed by the postal employee who delivered the notice of answer and hearing and complaint shall be forwarded to the Recorder and such statement shall constitute evidence of service.

(c) Where the only address against which Complainant seeks relief is outside the United States, a copy of the complaint, the tentative decision, and a copy of these rules of practice shall be sent by registered air mail, return receipt requested, by the Recorder to the address cited in the complaint. A written statement by the Recorder noting the time and place of mailing shall be accepted as evidence of service in the event a signed return receipt is not returned to the Recorder.

[36 FR 11563, June 16, 1971, as amended at 37 FR 7321, Apr. 13, 1972; 44 FR 61959, Oct. 29, 1979; 44 FR 65399, Nov. 13, 1979]

§ 952.9 Filing documents for the record.

(a) Each party shall file with the Recorder pleadings, motions, proposed orders and other documents for the record. The Recorder shall cause copies to be delivered promptly to other parties to the proceeding and to the presiding officer.

(b) The parties shall submit four copies of all documents unless otherwise ordered by the presiding officer. One copy shall be signed as the original.

(c) Documents shall be dated and state the docket number and title of the proceeding. Any pleading or other document required by order of the presiding officer to be filed by a specified date shall be delivered to the Recorder on or before such date. The date of filing shall be entered thereon by the Recorder.

[36 FR 11563, June 16, 1971, as amended at 44 FR 61960, Oct. 29, 1979]

§ 952.10 Answer.

(a) The answer shall contain a concise statement admitting, denying, or explaining each of the allegations set forth in the complaint.

(b) Any facts alleged in the complaint which are not denied or are expressly admitted in the answer may be considered as proved, and no further evidence regarding these facts need be adduced at the hearing.

(c) The answer shall be signed personally by an individual respondent, or in the case of a partnership by one of the partners, or, in the case of a corporation or association, by an officer thereof.

(d) The answer shall set forth the Respondent's address and telephone number or the name, address and telephone number of its attorney.

(e) The answer shall affirmatively state whether the respondent will appear in person or by counsel at the hearing.

(f) If the respondent does not desire to appear at the hearing in person or by counsel he may request that the matter be submitted for determination pursuant to paragraph (b) of § 952.11.

[36 FR 11563, June 16, 1971, as amended at 44 FR 61960, Oct. 29, 1979]

§ 952.11 Default.

(a) If the Respondent fails to file an answer within the time specified in the notice of answer and hearing, he shall be deemed in default, and to have waived hearing and further procedural steps. The Judicial Officer shall thereafter issue orders without further notice to the Respondent.

(b) If the Respondent files an answer but fails to appear at the hearing, the Respondent may, unless timely indications to the contrary are received, be deemed to have abandoned the intention to present a defense to the charges of the complaint, and the Judicial Officer, without further notice to Respondent, may issue the orders sought in the complaint.

[48 FR 55126, Dec. 9, 1983]

§ 952.12 Amendment of pleadings.

(a) Amendments proposed prior to the hearing shall be filed with the Recorder. Amendments proposed thereafter shall be filed with the presiding officer.

(b) By consent of the parties a pleading may be amended at any time. Also, a party may move to amend a pleading at any time prior to the close of the hearing and, provided that the amendment is reasonably within the scope of the proceeding initiated by the complaint, the presiding officer shall make such ruling on the motion as he deems to be fair and equitable to the parties.

(c) When issues not raised by the pleadings but reasonably within the scope of the proceedings initiated by the complaint are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendments as may be necessary to make the pleadings conform to the evidence and to raise such issues shall be allowed at any time upon the motion of any party.

(d) If a party objects to the introduction of evidence at the hearing on the ground that it is not within the issues made by the pleadings, but fails to satisfy the presiding officer that an amendment of the pleadings would prejudice him on the merits, the presiding officer may allow the pleadings to be amended and may grant a continuance to enable the objecting party to rebut the evidence presented.

(e) The presiding officer may, upon reasonable notice and upon such terms as are just, permit service of a supplemental pleading setting forth transactions, occurrences, or events which have happened since the date of the pleading sought to be supplemented and which are relevant to any of the issues involved.

[36 FR 11563, June 16, 1971, as amended at 44 FR 61960, Oct. 29, 1979]

§ 952.13 Continuances and extensions.

Continuances and extensions will not be granted by the presiding officer except for good cause shown.

§ 952.14 Hearings.

Hearings are held at the headquarters of the Postal Service, Washington, DC 20260, or other locations designated by the presiding officer.

§ 952.15 Change of place of hearings.

Not later than the date fixed for the filing of the answer, a party may file a request that a hearing be held to receive evidence in his behalf at a place other than that designated for hearing in the notice. He shall support his request with a statement outlining:

(a) The evidence to be offered in such place;

(b) The names and addresses of the witnesses who will testify;

(c) The reasons why such evidence cannot be produced at Washington, D.C. The presiding officer shall give consideration to the convenience and necessity of the parties and the relevancy of the evidence to be offered.

§ 952.16 Appearances.

(a) A respondent may appear and be heard in person or by attorney.

(b) An attorney may practice before the Postal Service in accordance with applicable rules issued by the Judicial Officer. See Part 951 of this chapter.

(c) When a respondent is represented by an attorney, all pleadings and other papers subsequent to the complaint shall be mailed to the attorney.

(d) A respondent must promptly file a notice of change of attorney.

§ 952.17 Presiding officers.

(a) The presiding officer at any hearing shall be an Administrative Law Judge qualified in accordance with law or the Judicial Officer (39 U.S.C. 204). The Chief Administrative Law Judge shall assign cases to Administrative Law Judges upon rotation so far as practicable. The Judicial Officer may, for good cause shown, preside at the reception of evidence in proceedings where expedited hearings are requested by either party.

(b) The presiding officer shall have authority to:

(1) Administer oaths and affirmations;

(2) Examine witnesses;

(3) Rule upon offers of proof, admissibility of evidence and matters of procedure;

(4) Order any pleading amended upon motion of a party at any time prior to the close of the hearing;

(5) Maintain discipline and decorum and exclude from the hearing any person acting in an indecorous manner;

(6) Require the filing of briefs or memoranda of law on any matter upon which he is required to rule;

(7) Order prehearing conferences for the purpose of the settlement or simplification of issues by the parties;

(8) Order the proceeding reopened at any time prior to his decision for the receipt of additional evidence;

(9) Render an initial decision, which becomes the final Agency decision unless a timely appeal is taken: The

Judicial Officer may issue a tentative or a final decision;

(10) Rule upon applications and requests filed under § 952.21.

[36 FR 11563, June 16, 1971, as amended at 38 FR 17216, June 29, 1973; 38 FR 20263, July 30, 1973; 44 FR 61960, Oct. 29, 1979]

§ 952.18 Evidence.

(a) Except as otherwise provided in these rules, the Federal Rules of Evidence shall govern. However, such rules may be relaxed to the extent that the presiding officer deems proper to insure a fair hearing. The presiding officer shall exclude irrelevant, immaterial or repetitious evidence.

(b) Testimony shall be under oath or affirmation and witnesses shall be subject to cross-examination.

(c) Agreed statements of fact may be received in evidence.

(d) Official notice or knowledge may be taken of the types of matters of which judicial notice or knowledge may be taken.

(e) Authoritative writings of the medical or other sciences, may be admitted in evidence but only through the testimony of expert witnesses or by stipulation.

(f) Lay testimonials will not be received in evidence as proof of the efficacy or quality of any product or thing sold through the mails.

(g) The written statement of a competent witness may be received in evidence provided that such statement is relevant to the issues, that the witness shall testify under oath at the hearing that the statement is in all respects true, and, in the case of expert witnesses, that the statement correctly states his opinion or knowledge concerning the matters in question.

(h) A party who objects to the admission of evidence shall make a brief statement of the grounds for the objection. Formal exceptions to the rulings of the presiding officer are unnecessary.

[36 FR 11563, June 16, 1971, as amended at 44 FR 61960, Oct. 29, 1979]

§ 952.19 Subpoenas.

The Postal Service is not authorized by law to issue subpoenas requiring the attendance or testimony of witnesses.

§ 952.20 Witness fees.

The Postal Service does not pay fees and expenses for respondent's witnesses or for depositions requested by respondent.

§ 952.21 Depositions, interrogatories, requests for admission of fact and production of documents.

(a) Not later than 5 days after the filing of Respondent's answer, any party may file application with the Recorder for the taking of testimony by deposition. In support of such application the applicant shall submit under oath or affirmation a statement setting out the reasons why such testimony should be taken by deposition, the time and the place, and the name and address of the witness whose deposition is desired, the subject matter of the testimony of each witness and its relevancy.

(b) If the application is granted, the order for the taking of the deposition will specify the time and place thereof, the name of the witness, and require that the deposition be taken before a person authorized to administer oaths as required by paragraph (f) of this section.

(c) Each witness testifying upon deposition shall be duly sworn, and the adverse party shall have the right to cross-examine. The questions and answers together with all objections, shall be reduced to writing and, unless waived by stipulation of the parties, shall be read to and subscribed by the witness in the presence of the deposition officer who shall certify it in the usual form. The deposition officer shall file the testimony taken by deposition as directed in the order. The deposition officer shall put the witness on oath. All objections made at the time of examination shall be noted by the deposition officer and the evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, a party may transmit written interrogatories to the officer, who shall propound them to the witness and record the answers verbatim. Objections to relevancy or materiality of testimony, or to errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of the parties and errors of any kind which might be obviated, cured or removed if promptly presented, are waived unless timely objection is made at the taking of the deposition.

(d) At the hearing any part or all of the deposition may be offered in evidence by any party who was present or represented at the taking of the deposition or who had notice thereof. If the deposition is not offered and received in evidence, it shall not be considered as a part of the record in the proceeding. The admissibility of depositions or parts thereof shall be governed by the rules of evidence.

(e) The party requesting the deposition shall pay all fees required to be paid to witnesses and the deposition officer, and shall provide an original and one copy of the deposition for the official record, and shall serve one copy upon the opposing party.

(f) Within the United States or within a territory or insular possession, subject to the dominion of the United States, depositions or interrogatories may be taken or certified before an officer authorized to administer oaths by the laws of the United States or of the place where the examination is held; within a foreign country, depositions or interrogatories may be taken or certified before a secretary of an embassy or legation, consul general, vice consul or consular agent of the United States, or any other person designated in the order for the taking of a deposition.

(g) Depositions may also be taken and submitted on written interrogatories in substantially the same manner as depositions taken by oral examination. When a deposition is taken upon written interrogatories and cross-interrogatories, none of the parties except a witness who is a party shall be present or represented, and no person, other than the witness, a stenographic reporter, and the officer shall be present at the examination of the witness, which fact shall be certified by the officer, who shall propound the interrogatories and cross-interrogatories to the witness in their order and reduce the testimony to writing in the witness' own words. For good cause shown or by stipulation of the parties, written interrogatories and cross-interrogatories propounding questions of fact may be answered by the witness in writing, without the presence of an officer and without being recorded by a stenographic reporter, provided the answers are sworn to by the witness before a person authorized to administer an oath prescribed by paragraph (f).

(h) Not later than 5 days after the filing of Respondent's answer, any party may serve on the other party a request for the admission of specified facts. In the event the party served refuses timely to respond to the request for admissions, the presiding officer for good cause shown may require the party served to admit or deny each requested fact. The factual propositions set out in the request shall be deemed admitted upon the failure of a party to respond to the presiding officer's order for admission or denial.

(i) Not later than 5 days after the filing of Respondent's answer, either party may file an application for the production of documents or objects. The application shall state the cause therefor and specifically identify the documents or objects and their relevance and materiality to the cause or causes in issue. The presiding officer may order the other party to produce and permit the inspection and photographing of any designated documents or objects not privileged which are reasonably calculated to lead to the discovery of admissible evidence. If the parties cannot themselves agree thereon, the presiding officer shall specify such terms and conditions in making the inspection and taking the copies and photographs.

(j) Failure of a party to comply with an order pursuant to this rule may result in the presiding officer's ruling that the disobedient party may not support or oppose designated charges or defenses or may not introduce designated matters in evidence. The presiding officer may also infer from the disobedient party's failure to comply with the order that the facts to which the order related would, if produced or admitted, be adverse to such party's interests. The admissibility of matter adduced by operation of § 952.21 shall be governed by § 952.18.

[36 FR 11563, June 16, 1971, as amended at 44 FR 61960, Oct. 29, 1979; 44 FR 65399, Nov. 13, 1979]

§ 952.22 Transcript.

(a) Hearings shall be stenographically reported by a contract reporter of the Postal Service under the supervision of the assigned presiding officer. Argument upon any matter may be excluded from the transcript by order of the presiding officer. A copy of the transcript shall be a part of the record and the sole official transcript of the proceeding. Copies of the transcript shall be supplied to the parties to the proceeding by the reporter at rates not to exceed the maximum rates fixed by contract between the Postal Service and the reporter. Copies of parts of the official record including exhibits admitted into evidence, other than the transcript, may be obtained by the Respondent from the Recorder upon the payment of reasonable copying charges. Items that cannot reasonably be photocopied may be photographed and furnished in that form to Respondent.

(b) Changes in the official transcript may be made only when they involve errors affecting substance and then only in the manner herein provided. No physical changes shall be made in or upon the official transcript, or copies thereof, which have been filed with the record. Within 10 days after the receipt by any party of a copy of the official transcript, or any part thereof, he may file a motion requesting correction of the transcript. Opposing counsel shall, within such time as may be specified by the presiding officer, notify the presiding officer in writing of his concurrence or disagreement with the requested corrections. Failure to interpose timely objection to a proposed correction shall be considered to be concurrence. Thereafter, the presiding officer shall by order specify the corrections to be made in the transcript. The presiding officer on his own initiative may order corrections to be made in the transcript with prompt notice to the parties of the proceeding. Any changes ordered by the presiding officer other than by agreement of the parties shall be subject to objection and exception.

[36 FR 11563, June 16, 1971, as amended at 44 FR 61961, Oct. 29, 1979]

§ 952.23 Proposed findings and conclusions.

(a) Each party to a proceeding, except one who fails to answer the complaint or, having answered, either fails to appear at the hearing or indicates in the answer that he does not desire to appear, may, unless at the discretion of the presiding officer such is not appropriate, submit proposed findings of fact, conclusions of law, orders and supporting reasons either in oral or written form in the discretion of the presiding officer. The presiding officer may also require parties to any proceeding to submit proposed findings of fact, conclusions of law, orders, and supporting reasons. Unless given orally, the date set for filing of proposed findings of fact, conclusions of law, orders and supporting reasons shall be within 15 days after the delivery of the official transcript to the Recorder who shall notify both parties of the date of its receipt. The filing date for proposed findings of fact, conclusions of law, orders and supporting reasons shall be the same for both parties. If not submitted by such date, or unless extension of time for the filing thereof is granted, they will not be included in the record or given consideration.

(b) Except when presented orally before the close of the hearing, proposed findings of fact shall be set forth in serially numbered paragraphs and shall state with particularity all evidentiary facts in the record with appropriate citations to the transcript or exhibits supporting the proposed findings. Each proposed conclusion shall be separately stated.

(c) Except when presented orally before the close of the hearing, proposed orders shall state the statutory basis of the order and, with respect to orders proposed to be issued pursuant to 39 U.S.C. 3005(a)(3), shall be set forth in serially numbered paragraphs stating with particularity the representations Respondent and its representatives shall cease and desist from using for the purpose of obtaining money or property through the mail.

[48 FR 55126, Dec. 9, 1983]

§ 952.24 Decisions.

(a) *Initial decision by Administrative Law Judge.* A written initial decision shall be rendered by an Administrative Law Judge with all due speed. The initial decision shall include findings and conclusions with the reasons therefor upon all the material issues of fact or law presented on the record, and the appropriate orders or denial thereof. The initial decision shall become the final Agency decision unless an appeal is taken in accordance with § 952.25.

(b) *Tentative or final decision by the Judicial Officer.* When the Judicial Officer presides at the hearing he shall issue a final or a tentative decision. Such decision shall include findings and conclusions with the reasons therefor upon all the material issues of fact or law presented on the record, and the appropriate orders or denial thereof. The tentative decision shall become the final Agency decision unless exceptions are filed in accordance with § 952.25.

(c) *Oral decisions.* The presiding Officer may render an oral decision (an initial decision by an Administrative Law Judge, or a tentative or final decision by the Judicial Officer) at the close of the hearing when the nature of the case and the public interest warrant. A party who desires an oral decision shall notify the presiding officer and the opposing party at least 5 days prior to the date set for the hearing. Either party may submit proposed findings, conclusions, and proposed orders either orally or in writing at the conclusion of the hearing.

[48 FR 55126, Dec. 9, 1983]

§ 952.25 Exceptions to initial decision or tentative decision.

(a) A party in a proceeding presided over by an Administrative Law Judge, except a party who failed to file an answer, may appeal to the Judicial Officer by filing exceptions in a brief on appeal within 15 days from the receipt of the Administrative Law Judge's initial decision.

(b) A party in a proceeding presided over by the Judicial Officer, except one who has failed to file an answer, may file exceptions within 15 days from the receipt of the Judicial Officer's tentative decision.

(c) If an initial or tentative decision is rendered orally by the presiding officer at the close of the hearing, he may then orally give notice to the parties participating in the hearing of the time limit within which an appeal must be filed.

(d) The date for filing the reply to an appeal brief or to a brief in support of exceptions to a tentative decision by the Judicial Officer is 10 days after the receipt thereof. No additional briefs shall be received unless requested by the Judicial Officer.

(e) Briefs upon appeal or in support of exceptions to a tentative decision by the Judicial Officer and replies thereto shall be filed in triplicate with the Recorder and contain the following matter in the order indicated:

(1) A subject index of the matters presented, with page references; a table of cases alphabetically arranged; a list of statutes and texts cited with page references.

(2) A concise abstract or statement of the case in briefs on appeal or in support of exceptions.

(3) Numbered exceptions to specific findings and conclusions of fact, conclusions of law, or recommended orders of the presiding officer in briefs on appeal or in support of exceptions.

(4) A concise argument clearly setting forth points of fact and of law relied upon in support of or in opposition to each exception taken, together with specific references to the parts of the record and the legal or other authorities relied upon.

(f) Unless permission is granted by the Judicial Officer no brief shall exceed 50 printed or 100 typewritten pages double spaced.

(g) The Judicial Officer will extend the time to file briefs only upon written application for good cause shown. The Recorder shall promptly notify the applicant of the decision of the Judicial Officer on the application. If the appeal brief or brief in support of exceptions is not filed within the time prescribed, the defaulting party will be deemed to have abandoned the appeal or waived the exceptions, and the initial or tentative decision shall become the final Agency decision.

[36 FR 11563, June 16, 1971, as amended at 38 FR 17216, June 29, 1973; 44 FR 61961, Oct. 29, 1979; 48 FR 55127, Dec. 9, 1983]

§ 952.26 Judicial Officer.

The Judicial Officer is authorized: (a) To act as presiding officer at hearings, (b) to render tentative decisions, (c) to render final Agency decisions, (d) to issue Postal Service orders for the Postmaster General, (e) to refer the record in any proceeding to the Postmaster General or the Deputy Postmaster General for final Agency decision, (f) to remand a case to the presiding officer for consideration, (g) to revise or amend these rules of practice. In determining appeals from initial decisions or exceptions to tentative decisions (*see* § 952.24 (a) and (b) *supra*), the entire official record will be considered before a final Agency decision is rendered. Before rendering a final Agency decision, the Judicial Officer may order the hearing reopened for the presentation of additional evidence by the parties.

[44 FR 61961, Oct. 29, 1979]

§ 952.27 Motion for reconsideration.

A party may file a motion for reconsideration of a final agency decision within 10 days after receiving it or within such longer period as the Judicial Officer may fix. Each motion for reconsideration shall be accompanied by a brief clearly setting forth the points of fact and of law relied upon in support of said motion.

[36 FR 11563, June 16, 1971, as amended at 38 FR 17216, June 29, 1973]

§ 952.28 Orders.

(a) If an order is issued which prohibits delivery of mail to a respondent it shall be incorporated in the record of the proceeding. The Recorder shall cause notice of the order to be published in the *Postal Bulletin* and cause the order to be transmitted to such postmasters and other officers and employees of the Postal Service as may be required to place the order into effect.

(b) If an order is issued which requires the Respondent to cease and desist from using certain representations for the purpose of obtaining money or property through the mail, it shall be incorporated in the record of the proceeding and a copy thereof shall be served upon the Respondent or his agent by certified mail or by personal service, or if no person can be found to accept service, service shall be accomplished by ordinary mail to the last known address of Respondent or his agent. If service is not accomplished by certified mail, a statement, showing the time and place of delivery, signed by the postal employee who delivered the order, shall be forwarded to the Recorder.

[36 FR 11563, June 16, 1971, as amended at 38 FR 17216, June 29, 1973; 44 FR 61961, Oct. 29, 1979; 48 FR 55127, Dec. 9, 1983]

§ 952.29 Modification or revocation of orders.

A party against whom an order or orders have been issued may file an application for modification or revocation thereof. The Recorder shall transmit a copy of the application to the General Counsel, who shall file a written reply within 10 days after filing or such other period as the Judicial Officer may fix. A copy of the reply shall be sent to the applicant by the Recorder. Thereafter an order granting or denying such application will be issued by the Judicial Officer.

[48 FR 55127, Dec. 9, 1983]

§ 952.30 Supplemental orders.

When the General Counsel or his designated representative shall have reason to believe that a person is evading or attempting to evade the provisions of any such orders by conducting the same or a similar enterprise under a different name or at a different address he may file a petition with accompanying evidence setting forth the alleged evasion or attempted evasion and requesting the issuance of a supplemental order or orders against the name or names allegedly used. Notice shall then be given by the Recorder to the person that the order has been requested and that an answer may be filed within 10 days of the notice. The Judicial Officer, for good cause shown, may hold a hearing to consider the issues in controversy, and shall, in any event, render a final decision granting or denying the supplemental order or orders.

[48 FR 55127, Dec. 9, 1983]

§ 952.31 Computation of time.

A designated period of time under these rules excludes the day the period begins, and includes the last day of the period unless the last day is a Saturday, Sunday, or legal holiday, in which event the period runs until the close of business on the next business day.

§ 952.32 Official record.

The transcript of testimony together with all pleadings, orders, exhibits, briefs and other documents filed in the proceeding shall constitute the official record of the proceeding.

§ 952.33 Public Information.

The Law Librarian of the Postal Service maintains for public inspection in the Law Library copies of all initial, tentative and final Agency decisions and orders. The Recorder maintains the complete official record of every proceeding.

[48 FR 55127, Dec. 9, 1983]

§ 952.34 Ex parte communications.

The provisions of 5 U.S.C. 551(14), 556(d) and 557(d) prohibiting ex parte communications are made applicable to proceedings under these rules of practice.

[42 FR 5357, Jan. 28, 1977]

PART 953—RULES OF PRACTICE IN PROCEEDINGS RELATIVE TO MAILABILITY

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Authority: 39 U.S.C. 204, 401.

Source: 42 FR 5357, Jan. 28, 1977, unless otherwise noted.

§ 953.1 Authority for rules.

These rules of practice are issued by the Judicial Officer of the U.S. Postal Service pursuant to authority delegated by the Postmaster General.

§ 953.2 Initiation.

Mailability proceedings are initiated upon the filing with the Docket Clerk of a Notice of Appeal.

§ 953.3 Notice of Appeal.

The Notice of Appeal shall: (a) Be accompanied by a copy or description of the determination or ruling upon which the appeal is based; (b) specify the character or content of the matter sought to be mailed; (c) request review of the mailability determination, and (d) specify whether an oral hearing is desired or whether the matter is to be submitted on the written record.

§ 953.4 Service of Notice of Appeal, Reply.

Upon receipt of the Notice of Appeal, the Docket Clerk shall issue a notice setting forth the date for filing a Reply to the Notice of Appeal, the date of the hearing, if one is requested, and the name of the presiding officer. This notice, together with copies of the Notice of Appeal, shall be sent promptly to the General Counsel and to the postmaster at the place of mailing to be served upon the appellant or his agent. A receipt for service upon the appellant shall be obtained and forwarded immediately to the Docket Clerk. If, after 3 days, the postmaster or his agent can find no person to accept service of the notice, it may be delivered in the same manner as other mail addressed to the appellant. A statement, showing the time and place of delivery, signed by the postal employee who delivered the notice shall be forwarded to the Docket Clerk and such statement shall constitute evidence of service.

§ 953.5 Reply.

The General Counsel shall Reply to the Notice of Appeal within the time established unless extended by the presiding officer for good cause shown. The Reply shall be filed in triplicate with the Docket Clerk. Allegations not answered shall be deemed admitted.

§ 953.6 Hearings.

(a) The Federal Rules of Evidence (28 App. U.S.C. (Supp. V, 1975)) shall be applicable to the hearings conducted under this part, except that the rules may be relaxed to the extent that the presiding officer deems proper to assure a fair hearing. Evidence presented at the hearing shall be limited to material evidence relevant to the issues as drawn by the pleadings or as defined in the prehearing conference, if any, subject to such later modifications of the issues as may be necessary to protect the public interest or to prevent injustice and shall not be unduly repetitious.

(b) Objections to the admission or exclusion of evidence shall be in short form, stating the grounds of objections relied upon, and the transcript shall not include argument or debate thereon except as ordered by the presiding officer. Rulings on such objections shall be a part of the transcript.

(c) Formal exceptions to the rulings of the presiding officer made during the course of the hearing are unnecessary. For all purposes for which an exception otherwise would be taken, it is sufficient that a party, at the time the ruling of the presiding officer is made or sought, makes known the action he desires the presiding officer to take or his objection to an action taken, and his grounds therefor.

§ 953.7 Compromise and informal dispositions.

Either party may request the other to consider informal disposition of any question of mailability, and the scheduled hearing date may be postponed for such period of time as may be necessary to accommodate settlement discussions between the parties.

§ 953.8 Default; appearances.

If no Reply to the Notice of Appeal is filed, the General Counsel shall be deemed in default and the Judicial Officer shall instruct the postmaster of the disposition to be made of the matter. If an oral evidentiary hearing is to be held, the appellant may appear at the hearing in person or by counsel. If either party fails to appear at the hearing, the presiding officer shall receive the evidence of the party appearing and render a decision.

§ 953.9 Location of hearing.

Unless otherwise ordered by the presiding officer, the hearing shall be held at the headquarters of the Postal Service, 475 L'Enfant Plaza West, SW., Washington, DC 20260, on the date set in the notice.

§ 953.10 Change of place of hearing.

Not later than the date fixed for the filing of the Reply, a party may file a request that a hearing be held to receive evidence in his behalf at a place other than that designated for hearing in the notice. He shall support his request with a statement outlining: (a) The evidence to be offered in such place; (b) the names and addresses of the witnesses who will testify; (c) the reasons why such evidence cannot be produced at Washington, D.C. The presiding officer shall give consideration to the convenience and necessity of the parties and the relevancy of the evidence to be offered.

§ 953.11 Presiding officers.

The presiding officer at any hearing shall be an Administrative Law Judge qualified in accordance with law (5 U.S.C. 3105) or the Judicial Officer (39 U.S.C. 204). The Chief Administrative Law Judge shall assign cases to Administrative Law Judges upon rotation so far as practicable. The Judicial Officer may, for good cause shown, preside at the reception of evidence in proceedings where expedited hearings

(§ 953.16, *infra*) are requested by either party.

§ 953.12 Proposed findings of fact.

Unless otherwise ordered, proposed findings of fact and conclusions of law shall be submitted orally or in writing at the conclusion of the hearing.

§ 953.13 Initial decision.

Unless given orally at the conclusion of the hearing, the Administrative Law Judge shall render an initial decision as expeditiously as practicable following the conclusion of the hearing, and the receipt of the proposed findings, if any. The initial decision shall become the decision of the Postal Service if an appeal is not perfected.

§ 953.14 Appeal.

Either party may file exceptions in a brief on appeal to the Judicial Officer within 5 days after receipt of the initial decision unless additional time is granted. A reply brief may be filed within 5 days after the receipt of the appeal brief by the opposing party.

§ 953.15 Final Agency decision.

The Judicial Officer shall render a final Agency decision or refer the matter to the Postmaster General for decision. The decision shall be served upon the parties and the postmaster.

§ 953.16 Expedition.

For the purpose of further expedition the parties may, with the concurrence of the Judicial Officer, agree to waive any of these procedures. When the Judicial Officer presides at the hearing, he shall render a tentative or final decision after the conclusion of the hearing. Exceptions may be filed to a tentative decision in accordance with § 953.14.

§ 953.17 Disposition.

Mail matter found to be nonmailable shall be held at the post office where detained for a period of 15 days from the date of the Postal Service decision, unless extended by the Judicial Officer. During that time the mailer may make application for the withdrawal of the matter. The Judicial Officer shall order the matter returned to the mailer or otherwise disposed of in accordance with 39 U.S.C. 3001(b).

§ 953.18 Ex parte communications.

The provisions of 5 U.S.C. 551(14), 556(d) and 557(d) prohibiting ex parte communications are made applicable to proceedings under these rules of practice.

PART 954—RULES OF PRACTICE IN PROCEEDINGS RELATIVE TO THE DENIAL, SUSPENSION, OR REVOCATION OF SECOND-CLASS MAIL PRIVILEGES

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AUTHORITY: 39 U.S.C. 204, 401.

SOURCE: 36 FR 11567, June 16, 1971, unless otherwise noted.

EDITORIAL NOTE: For nomenclature changes to this part, see 37 FR 23422, Nov. 3, 1972.

§ 954.1 Authority for rules.

These rules of practice are issued by the Judicial Officer of the U.S. Postal Service pursuant to authority delegated by the Postmaster General.

§ 954.2 Scope of rules.

The rules of practice shall apply to all Postal Service proceedings concerning applications, denials, suspensions and revocations of second-class mailing privileges arising under former title 39 U.S.C. 4351, 4352, 4353, 4354, 4355, 4356, and 4369 as continued by sec. 3 of the Postal Reorganization Act (Pub. L. 91-375).

§ 954.3 Informal dispositions.

These rules do not preclude the informal dispositions of second-class mailing privilege matters before or after institution of proceedings.

§ 954.4 Office business hours.

The offices of the officials mentioned in these rules are located at the U.S. Postal Service, 475 L'Enfant Plaza West, SW., Washington, DC 20260, and are open Monday through Friday from 8:15 a.m. to 4:45 p.m.

[38 FR 17217, June 29, 1973, as amended at 42 FR 7955, Feb. 8, 1977]

§ 954.5 Application.

A publisher may file an application for second-class mailing privileges. (See Part 132 of this chapter.) An authorized administrative official of the Postal Service (hereinafter called "the authorized official") rules upon all applications. If he denies the application he shall notify the publisher specifying the reasons for his denial and attaching a copy of these rules. Before taking action on an application, the authorized official may call upon the publisher for additional information or evidence to support or clarify the application. Failure of the publisher to furnish such information or evidence may be cause for the authorized official to deny the application as incomplete or, on its face, not fulfilling the requirements for entry.

[36 FR 11567, June 16, 1971, as amended at 38 FR 17217, June 29, 1973; 42 FR 30504, June 15, 1977]

§ 954.6 Revocation or suspension.

When the authorized official determines that a publication is no longer entitled to second-class mailing privileges, he shall issue a ruling of suspension or revocation to the publisher at the last known address of the office of publication stating the reasons and attaching a copy of these rules.

[36 FR 11567, June 16, 1971, as amended at 38 FR 17217, June 29, 1973]

§ 954.7 Failure to appeal proposed action.

A ruling of the authorized official shall become final upon failure of the publisher to file a petition in accordance with the requirements of § 954.8(b).

[36 FR 11567, June 16, 1971, as amended at 38 FR 17217, June 29, 1973]

§ 954.8 Pleading.

(a) *Place of filing.* Parties shall file an original and three copies of all documents of record, unless otherwise ordered by the presiding officer with the Docket Clerk of the Postal Service, who shall cause copies to be delivered to the other parties and to the presiding officer. Service is ordinarily made on the private parties by certified mail and delivery is deemed complete when a document or notice of its arrival is left at the designated address. The Docket Clerk shall maintain a docket and the files in all proceedings.

(b) *Petition.* A publisher may appeal from a ruling of the authorized official by filing a petition within 15 days of the receipt of the ruling unless the time is extended by the authorized official. The petition shall state the reasons why the publisher (designated "Petitioner" in the proceeding) believes the ruling of the authorized official is erroneous and shall provide the address at which documents may be served on the Petitioner. The petition shall also allege facts showing compliance with each provision of law or regulation on which the publisher's claim to second-class mail privileges is based. The publisher shall attach to his petition a copy of the letter of the authorized official denying, suspending or revoking second class mail privileges.

(c) *Notice of hearing.* Upon receipt of the petition the Docket Clerk shall set a date for the hearing and issue a notice of hearing to the parties stating the time and place of the hearing, the date for filing an answer, and the name of the presiding officer.

(d) *Answer.* The authorized official (designated the "Respondent" in the proceeding) shall answer the petition within 15 days after filing and admit or deny each allegation of the petition.

(e) *Amendment.* An amendment of a pleading may be offered by any party at any time prior to the close of the hearing. If the presiding officer deems it appropriate to permit the amendment of a pleading, he may impose such conditions, by way of continuance of the hearing date or otherwise, as he considers necessary to assure a fair hearing.

[36 FR 11567, June 16, 1971, as amended at 38 FR 17217, June 29, 1973]

§ 954.9 Default.

If a publisher fails to appear at the hearing, the presiding officer may: (a) Dismiss the petition; (b) order the petitioner to show cause within 30 days from the date of the order why an order of dismissal should not be entered, and thereafter enter such order as the presiding officer deems to be appropriate. If the petition is dismissed by order of an Administrative Law Judge, the dismissal may be appealed to the Judicial Officer within 15 days from the date of the order.

§ 954.10 Intervention or other participation.

To intervene or otherwise participate in a proceeding, any person may file a timely application in accordance with § 954.8(a). A timely application is one which will not unduly delay the proceeding. The application shall state whom the potential intervenor represents, his interest, the extent to which he desires to participate, and the evidence he seeks to introduce. The presiding officer shall fix the time within which the parties shall answer the application. The presiding officer shall grant or deny the application on such terms and conditions as he deems appropriate. In so doing the presiding officer will consider, among other things, whether intervention or other participation is consistent with the timely and proper adjudication of the rights of the original parties.

[31 FR 5198, Mar. 31, 1966. Redesignated at 31 FR 16270, Dec. 20, 1966]

§ 954.11 Hearings.

Hearings are held at the headquarters of the Postal Service, Washington, DC 20260, or other locations designated by the presiding officer.

§ 954.12 Change of place of hearing.

Not later than the date fixed for the filing of the answer, a party may file a request that a hearing be held to receive evidence in his behalf at a place other than that designated for hearing in the notice. He shall support his request with a statement setting forth:

(a) The evidence to be offered in such place;

(b) The names and addresses of the witnesses who will testify;

(c) The reasons why such evidence cannot be produced at Washington, D.C.

The presiding officer shall give consideration to the convenience and necessity of the parties and the relevancy of the evidence to be offered.

§ 954.13 Appearances.

(a) The General Counsel of the Postal Service or a member of his staff designated by him shall represent the Director.

(b) A publisher or intervenor may appear and be heard in person or by attorney. Attorneys may practice before the Postal Service in accordance with applicable rules issued by the Judicial Officer. See Part 951 of this chapter.

(c) An attorney representing a publisher or intervenor shall file a written authorization from the publisher or intervenor before he may participate in the proceeding. The publisher or intervenor must promptly file a notice of change of attorneys.

(d) When a publisher or intervenor is represented by an authorized attorney all subsequent pleadings shall be served upon the attorney.

§ 954.14 Presiding officers.

(a) The Chief Administrative Law Judge shall assign each case to an Administrative Law Judge qualified in accordance with law to preside over the hearing. Such assignments shall be made, so far as practical, in rotation.

(b) The presiding officer shall have authority to:

(1) Administer oaths and affirmations;

(2) Examine witnesses;

(3) Rule upon matters of evidence and procedure;

(4) Order any pleading amended upon motion of a party at any time prior to the close of the hearing;

(5) Maintain discipline and decorum and exclude from the hearing any person acting in an indecorous manner;

(6) Require the filing of briefs on any matter upon which he is required to rule;

(7) Order prehearing conferences for the settlement or simplification of issues by consent of the parties;

(8) Order the proceeding reopened at any time prior to his decision for the receipt of additional evidence;

(9) Render an initial decision.

[36 FR 11567, June 16, 1971, as amended at 38 FR 17217, June 29, 1973; 38 FR 20263, July 30, 1973]

§ 954.15 Judicial Officer.

The Judicial Officer is authorized (a) to act as presiding officer at hearings and (b) to render a final Postal Service Decision for the Postmaster General. On appeal from an Initial Decision of an Administrative Law Judge, the Judicial Officer will consider the entire record including the initial decision and the exceptions to that decision. Before any final agency decision has been rendered, the Judicial Officer may order the hearing reopened for the presiding officer to take additional evidence.

§ 954.16 Procedure.

(a) *Evidence.* The general rules of evidence governing civil proceedings in matters not involving trial by jury in the courts of the United States apply. The rules may be relaxed to the extent that the presiding officer may deem proper to insure an adequate and fair hearing. The presiding officer may exclude irrelevant or repetitious evidence.

(b) *Subpoenas.* The Postal Service is not authorized to issue subpoenas.

(c) *Fees.* The Postal Service does not pay fees and expenses for witnesses of, or depositions requested by, the publisher or intervenor.

(d) *Depositions.* Depositions may be taken as follows:

(1) Not later than 5 days after the filing of Director's answer, any party may file application with the presiding officer for the taking of testimony by deposition. In support of such application the applicant shall submit under oath or affirmation a statement setting out the reasons why such testimony should be taken by deposition, the time and the place, and the name and address of the witness whose deposition is desired, the subject matter of the testimony of each witness, its relevancy, and the name and address of the person before whom the deposition is to be taken.

(2) If the application is granted, the order for the taking of the deposition will specify the time and place thereof, the name of the witness, the person before whom the deposition is to be taken and any other necessary information.

(3) Each witness testifying upon deposition shall be duly sworn by the deposition officer and the adverse party shall have the right to cross-examine. The questions and answers together with all objections, shall be reduced to writing and, unless waived by stipulation of the parties, shall be read to and subscribed by the witness in the presence of the deposition officer who shall certify it in the usual form. The deposition officer shall file the testimony taken by deposition as directed in the order. All objections made at the time of examination shall be noted by the deposition officer and the evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, a party may transmit written interrogatories to the deposition officer, who shall propound them to the witness and record the answers verbatim. Objections to relevancy or materiality of testimony, or to errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of the parties and errors of any kind which might be obviated, cured or removed if promptly

presented, are waived unless timely objection is made at the taking of the deposition.

(4) At the hearing any part or all of the deposition may be offered in evidence by any party who was present or represented at the taking of the deposition or who had notice thereof. If the deposition is not offered and received in evidence, it shall not be considered as a part of the record in the proceeding. The admissibility of depositions or parts thereof shall be governed by the rules of evidence.

(5) The party requesting the deposition shall pay all fees required to be paid to witnesses and the deposition officer, and shall provide an original and one copy of the deposition for the official record, and shall serve one copy upon the opposing party.

(6) Within the United States or within a territory or insular possession subject to the dominion of the United States, depositions may be taken before an officer authorized to administer oaths by the laws of the United States or of the place where the examination is held; within a foreign country, depositions may be taken before a secretary of an embassy or legation, consul general, vice consul or consular agent of the United States, or any other person designated in the order for the taking of a deposition.

(7) Depositions may also be taken and submitted on written interrogatories in substantially the same manner as depositions taken by oral examination. When a deposition is taken upon written interrogatories and cross-interrogatories, none of the parties shall be present or represented, and no person, other than the witness, a stenographic reporter, and the deposition officer shall be present at the examination of the witness, which fact shall be certified by the officer, who shall propound the interrogatories and cross-interrogatories to the witness in their order and reduce the testimony to writing in the witness' own words.

§ 954.17 Transcript.

(a) A contract reporter of the Postal Service under the supervision of the presiding officer shall report hearings. The reporter shall supply the parties with copies of the transcript at rates not to exceed those fixed by contract between the Postal Service and the reporter.

(b) Changes in the official transcript may be made only when they involve substantial errors. A party may file a motion for correction of the official transcript within 10 days after his receipt of the transcript or any part thereof. Other parties shall, within such time as may be specified by the presiding officer, notify the presiding officer in writing if they object to the requested corrections. Failure of a party to interpose timely objection to a proposed correction may be considered by the presiding officer to be concurrence. The presiding officer shall then specify the corrections to be made in the transcript. He may on his own initiative order corrections in the transcript after notice to the parties subject to their objection.

§ 954.18 Proposed findings and conclusions.

(a) A party to a proceeding may submit proposed findings of fact and conclusions of law to the presiding officer. The presiding officer shall determine whether they shall be oral or written. The presiding officer may require parties to a proceeding to submit proposed findings of fact and conclusions of law with supporting reasons. When the proposed findings and conclusions are not submitted orally they shall be filed within 15 days after delivery of the official transcript to the Docket Clerk. The Docket Clerk shall notify the parties of the filing date which shall be the same for both parties. If not submitted by that date, the findings and conclusions will not be considered or included in the record.

(b) Except when presented orally, proposed findings of fact and conclusions of law shall be set forth in numbered paragraphs and shall state with particularity all evidentiary facts in the record with appropriate citations to the transcript or exhibits relied upon to support the conclusions proposed. Each proposed conclusion shall be separately stated.

§ 954.19 Initial decision.

(a) Upon request of either party the presiding officer may render an oral initial decision at the close of the hearing when the nature of the case and the public interest warrant. If a party desires an oral initial decision he shall notify the presiding officer and the opposing party at least 5 days prior to the date set for hearing. Parties may then submit proposed findings and conclusions orally or in writing at the conclusion of the hearing.

(b) If an oral initial decision is not rendered, the presiding officer shall render a written initial decision with all due speed after the parties have submitted all posthearing material. The initial decision shall become the final agency decision unless it is appealed.

(c) The initial decision shall include findings upon all material issues of fact and law presented on the record and the reasons for those findings.

§ 954.20 Appeals.

(a) A party may appeal to the Judicial Officer from an initial decision by filing exceptions in a brief on appeal within 15 days from the receipt of a written or oral initial decision.

(b) The time for the filing of the reply brief is 10 days after receipt of the appeal brief. No additional briefs shall be received unless requested by the Judicial Officer.

(c) Appeal briefs shall contain the following matter in the order indicated:

(1) A subject index of the matters presented with page references;

(2) A table of cases alphabetically arranged;

(3) A list of statutes and texts cited with page references;

(4) A concise abstract or statement of the case;

(5) Numbered exceptions to the findings and conclusions of the presiding officer and the reasons for the exceptions.

(d) Reply briefs shall contain paragraphs (c) (1), (2), and (3) of this section and the reasons for opposing the exceptions.

[36 FR 11567, June 16, 1971, as amended at 38 FR 17217, June 29, 1973]

§ 954.21 Motion for reconsideration.

Within 10 days from the date thereof, or such longer period as may be fixed by the Judicial Officer, either party may file a motion for reconsideration of a final Agency decision.

§ 954.22 Continuances.

For good cause shown, continuances or extensions may be granted by the presiding officer. Similar action may be taken by the Judicial Officer when the proceeding is on appeal.

§ 954.23 Computation of time.

A designated period of time under these rules excludes the day the period begins, and includes the last day of the period unless the last day is a Saturday, Sunday, or holiday, in which event the period runs until the close of business on the next working day.

§ 954.24 Official record.

The pleadings, orders, exhibits, transcript of testimony, briefs, decisions and other documents filed in the proceeding constitute the official record of the proceeding.

§ 954.25 Public information.

The Law Librarian of the Postal Service maintains for public inspection in the Law Library copies of all initial and final Agency decisions. The Docket Clerk of the Postal Service maintains a complete official record of every proceeding. A person may examine a record upon authorization by the Judicial Officer.

§ 954.26 Ex parte communications.

The provisions of 5 U.S.C. 551(14), 556(d) and 557(d) prohibiting ex parte communications are made applicable to proceedings under these rules of practice.

[42 FR 5358, Jan. 28, 1977]

PART 955—RULES OF PRACTICE BEFORE THE BOARD OF CONTRACT APPEALS

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AUTHORITY: 39 U.S.C. 204, 401.

SOURCE: 41 FR 7408, Feb. 18, 1976, unless otherwise noted.

§ 955.1 Jurisdiction, procedure, representation of parties.

(a) *Jurisdiction for considering appeals.* The U.S. Postal Service Board of Contract Appeals (referred to herein as the "Board") shall consider and determine appeals from decisions of contracting officers arising under contracts which contain provisions requiring the determination of appeals by the Postmaster General or his duly authorized representative or board. In addition the Board shall have jurisdiction over other matters assigned to it by the Postmaster General. The Board has authority to determine appeals falling within the scope of its jurisdiction as fully and finally as might the Postmaster General himself.

(b) *Organization and location of the Board.* (1) The Board is located in Washington, D.C., and its mailing address is 475 L'Enfant Plaza West SW., Washington, DC 20260.

(2) The Board consists of the Judicial Officer as Chairman, the Associate Judicial Officer as Vice Chairman and the Administrative Law Judges of the Postal Service. All members of the Board shall be attorneys at law duly licensed by any state, commonwealth, territory, or the District of Columbia. In general, the appeals are assigned to a panel of at least three members of the Board. The decision of a majority of the panel constitutes the decision of the Board.

(c) *Decisions on questions of law.* When an appeal is taken pursuant to a Disputes Clause in a contract which limits appeals to disputes concerning questions of fact, the Board may, in its discretion, hear, consider, and decide all questions of law necessary for the complete adjudication of the issue. In the consideration of an appeal, should it appear that a claim is involved which is not cognizable under the terms of the contract, the Board may make findings of fact with respect to such a claim without expressing an opinion on the question of liability.

(d) *Board of contract appeals procedure.* (1) *Rules.* Appeals referred to the Board are handled in accordance with the rules of the Board.

(2) *Administration and interpretation of rules.* Emphasis is placed upon

the sound administration of these rules in specific cases, because it is impracticable to articulate a rule to fit every possible circumstance which may be encountered. These rules will be interpreted so as to secure a just and inexpensive determination of appeals without unnecessary delay.

(3) *Preliminary procedures.* Preliminary procedures are available to encourage full disclosure of relevant and material facts, and to discourage unwarranted surprise.

(4) *Time, computation, and extensions.* (i) All time limitations specified for various procedural actions are computed as maximums, and are not to be fully exhausted if the action described can be accomplished in a lesser period. These time limitations are similarly eligible for extension in appropriate circumstances, on good cause shown.

(ii) Except as otherwise provided by law, in computing any period of time prescribed by these rules or by any order of the Board, the day of the event from which the designated period of time begins to run shall not be included, but the last day of the period shall be included unless it is a Saturday, Sunday, or a legal holiday in which event the period shall run to the end of the next business day.

(iii) Requests for extensions of time from either party shall be made in writing stating good cause therefor.

(5) *Place of filings.* Unless the Board otherwise directs, all notices of appeal, pleadings and other communications shall be filed with the Docket Clerk of the Board at its offices in the U.S. Postal Service Headquarters Building, 475 L'Enfant Plaza West SW., Washington, DC 20260. Communications to the Board shall be addressed to Board of Contract Appeals, U.S. Postal Service, Washington, DC 20260.

(e) *Representation of parties.* Whenever reference is made to contractor, appellant, contracting officer, respondent and parties, this shall include respective counsel for the parties, as soon as appropriate notices of appearance have been filed with the Board.

[41 FR 7408, Feb. 18, 1976, as amended at 43 FR 60275, Dec. 27, 1978]

PRELIMINARY PROCEDURES

§ 955.2 Appeals, how taken.

Notice of an appeal must be in writing, and the original, together with two copies, may be filed with the contracting officer from whose decision the appeal is taken. The notice of appeal must be mailed or otherwise filed within the time specified therefor in the contract or allowed by applicable provision of directive or law.

§ 955.3 Notice of appeal, contents of.

A notice of appeal should indicate that an appeal is thereby intended, and should identify the contract (by number), the department and agency or bureau cognizant of the dispute, and the decision from which the appeal is taken. The notice of appeal should be signed personally by the appellant (the contractor making the appeal), or by an officer of the appellant corporation or member of the appellant firm, or by the contractor's duly authorized representative or attorney. The complaint referred to in § 955.7 may be filed with the notice of appeal, or the appellant may designate the notice of appeal as a complaint, if it otherwise fulfills the requirements of a complaint.

§ 955.4 Forwarding of appeals.

When a notice of appeal in any form has been received by the contracting officer, he shall endorse thereon the date of mailing (or date of receipt, if otherwise conveyed) and within 10 days shall forward said notice of appeal to the Board. Following receipt by the Board of the original notice of an appeal (whether through the contracting officer or otherwise), the contractor and contracting officer will be promptly advised of its receipt and the contractor will be furnished a copy of these rules.

§ 955.5 Preparation, contents, organization, forwarding, and status of appeal file.

(a) *Duties of contracting officer.* Within 30 days of receipt of an appeal, or advice that an appeal has been filed, the contracting officer shall assemble and transmit to the Board through Postal Service counsel an appeal file consisting of all documents pertinent to the appeal, including:

(1) The decision and findings of fact from which appeal is taken;

(2) The contract including specifications and pertinent amendments, plans and drawings;

(3) All correspondence between the parties pertinent to the appeal, including the letter or letters of claim in response to which decision was issued;

(4) Transcripts of any testimony taken during the course of proceedings, and affidavits or statements of any witnesses on the matter in dispute made prior to the filing of the notice of appeal with the Board; and

(5) Any additional information considered pertinent.

Within the same time above specified Postal Service counsel shall furnish the appellant a copy of each document he transmits to the Board, except those stated in paragraph (a)(2) of this section, as to which a list furnished appellant indicating specific contractual documents transmitted will suffice, and those stated in paragraph (d) of this section.

(b) *Duties of the appellant.* Within 30 days after receipt of a copy of the appeal file assembled by the contracting officer, the appellant shall supplement the same by transmitting to the Board any documents not contained therein which he considers pertinent to the appeal, furnishing two copies of such documents to the Government trial attorney.

(c) *Organization of appeal file.* Documents in the appeal file may be originals or legible facsimile or authenticated copies thereof, and shall be arranged in chronological order where practicable, numbered sequentially, tabbed, and indexed to identify the contents of the file.

(d) *Lengthy documents.* The Board may waive the requirement of furnishing to the other party copies of bulky, lengthy, or out-of-size documents in the appeal file when a party has shown that doing so would impose an undue burden. At the time a party files with the Board a document as to which such a waiver has been granted, he shall notify the other party that the same or a copy is available for inspection at the offices of the Board or of the party filing same.

(e) *Status of documents in appeal file.* Documents contained in the appeal file are considered, without further action by the parties, as part of the record upon which the Board will render its decision, unless a party objects to the consideration of a particular document in advance of hearing or of settling the record in the event there is no hearing on the appeal. If objection to a document is made, the Board will rule upon its admissibility into the record as evidence in accordance with §§ 955.14 and 955.21.

§ 955.6 Dismissal for lack of jurisdiction.

Any motion addressed to the jurisdiction of the Board shall be promptly filed. Hearing on the motion shall be afforded on application of either party, unless the Board determines that its decision on the motion will be deferred pending hearing on both the merits and the motion. The Board shall have the right at any time and on its own motion to raise the issue of its jurisdiction to proceed with a particular case, and shall do so by an appropriate order, affording the parties an opportunity to be heard thereon.

§ 955.7 Pleadings.

(a) *Appellant.* Within 30 days after receipt of notice of docketing of the appeal, the appellant shall file with the Board an original and one copy of a complaint setting forth simple, concise and direct statements of each of his claims, alleging the basis, with appropriate reference to contract provisions, for each claim, and the dollar amount claimed. This pleading shall fulfill the generally recognized requirements of a complaint although no particular form or formality is required. Upon receipt thereof, the Board shall serve a copy upon the respondent. Should the complaint not be received within 30 days, appellant's claim and appeal may, if in the opinion of the Board the issues before the Board are sufficiently defined, be deemed to set forth his complaint and the respondent shall be so notified.

(b) *Respondent.* Within 30 days from receipt of said complaint, or the aforesaid notice from the Board, respondent shall prepare and file with the Board an original and one copy of an answer thereto, setting forth simple, concise, and direct statements of respondent's defenses to each claim asserted by appellant. This pleading shall fulfill the generally recognized requirements of an answer, and shall set forth any affirmative defenses or counter-claims as appropriate. Upon receipt thereof, the Board shall serve a copy upon appellant. Should the answer not be received within 30 days, the Board may, in its discretion, enter a general denial on behalf of the Government, and the appellant shall be so notified.

§ 955.8 Amendments of pleadings or record.

(a) The Board upon its own initiative or upon application by a party may, in its discretion, order a party to make a more definite statement of the complaint or answer, or to reply to an answer.

(b) The Board may, in its discretion, and within the proper scope of the appeal, permit either party to amend his pleading upon conditions just to both parties. When issues within the proper scope of the appeal, but not raised by the pleadings or the documentation described in § 955.5, are tried by express or implied consent of the parties, or by permission of the Board, they shall be treated in all respects as if they had been raised therein. In such instances, motions to amend the pleadings to conform to the proof may be entered, but are not required. If evidence is objected to at a hearing on the ground that it is not within the issues raised by the pleadings or the documentation required pursuant to § 955.5 (which shall be deemed part of the pleadings for this purpose), it may be admitted within the proper scope of the appeal, provided, however, that the objecting party may be granted a continuance if necessary to enable him to meet such evidence.

§ 955.9 Hearing election.

Upon receipt of respondent's answer or the notice referred to in the last sentence of § 955.7(b), appellant shall advise whether he desires a hearing as prescribed in §§ 955.18 through 955.26, or whether, in the alternative, he elects to submit his case on the record without a hearing, as prescribed in § 955.12. In appropriate cases, the appellant shall also elect whether he desires the optional accelerated procedure prescribed in § 955.13.

§ 955.10 Prehearing briefs.

Based on an examination of the documentation described in § 955.5, the pleadings, and a determination of whether the arguments and authorities addressed to the issues are adequately set forth therein, the Board may, in its discretion, require the parties to submit prehearing briefs in any case in which a hearing has been elected pursuant to § 955.9. In the absence of a Board requirement therefor, either party may, in its discretion and upon appropriate and sufficient notice to the other party, furnish a prehearing brief to the Board. In any case where a prehearing brief is submitted, it shall be furnished so as to be received by the Board at least 15 days prior to the date set for hearing, and a copy shall simultaneously be furnished to the other party as previously arranged.

§ 955.11 Prehearing or presubmission conference.

Whether the case is to be submitted pursuant to § 955.12, or heard pursuant to §§ 955.18 through 955.26, the Board may upon its own initiative or upon the application of either party, call upon the parties to appear before a Board Member for a conference to consider:

(a) The simplification or clarification of the issues;

(b) The possibility of obtaining stipulations, admissions, agreements on documents, understandings on matters already of record, or similar agreements which will avoid unnecessary proof;

(c) The limitation of the number of expert witnesses, or avoidance of similar cumulative evidence, if the case is to be heard;

(d) The possibility of agreement disposing of all or any of the issues in dispute; and

(e) Such other matters as may aid in the disposition of the appeal.

The results of the conference shall be reduced to writing by the Board Member and this writing shall thereafter constitute part of the record.

§ 955.12 Submission without a hearing.

Either party may elect to waive a hearing and to submit his case upon the record before the Board, as settled pursuant to § 955.14. Submission of the case without hearing does not relieve the parties from the necessity of proving the facts supporting their allegations or defenses. Affidavits, depositions, admissions, answers to interrogatories, and stipulations may be employed to supplement other documentary evidence in the Board record. The Board may permit such submission to be supplemented by oral argument (transcribed if requested), and by briefs arranged in accordance with § 955.24.

§ 955.13 Optional accelerated procedure.

(a) In appeals involving $25,000 or less, either party may elect, in his notice of appeal, complaint, answer, or by separate correspondence or statement prior to commencement of hearing or settlement of the record, to have the appeal processed under a shortened and accelerated procedure. For application of this rule the amount in controversy will be determined by the sum of the amounts claimed by either party against the other in the appeal proceeding. If no specific amount of claim is stated, a case will be considered to fall within this rule if the sum of the amounts which each party represents in writing that it could recover as a result of a Board decision favorable to it does not exceed $25,000. Upon such election, a case shall then be processed under this rule unless the other party objects and shows good cause why the substantive nature of the dispute requires processing under the Board's regular procedures and the Board sustains such objection. In cases proceeding under this rule, parties are encouraged, to the extent possible consistent with adequate presentation of their factual and legal positions, to waive pleadings, discovery, and briefs.

(b) Written decision by the Board in cases proceeding under this rule normally will be short and contain summary findings of fact and conclusions only. The Board will endeavor to render such decisions within 30 days after the appeal is ready for decision. Such decisions will be rendered for the Board by a single Board Member with the concurrence of the Chairman or a designated member; except that in cases involving $5,000 or less where there has been a hearing, the single Board Member presiding at the hearing may, in his discretion, at the conclusion of the hearing and after entertaining such oral arguments as he deems appropriate, render on the record oral summary findings of fact, conclusions and decision of the appeal. In the latter instance, the Board will subsequently furnish the parties a typed copy of such oral decision for record and payment purposes and to establish the date from which the period for filing a motion for reconsideration under § 955.30 commences.

Except as herein modified, these rules otherwise apply in all respects.

§ 955.14 Settling the record.

(a) The record upon which the Board's decision will be rendered consists of the appeal file described in § 955.5, and to the extent the following items have been filed, pleadings, prehearing conference memoranda or orders, prehearing briefs, depositions or interrogatories received in evidence, admissions, stipulations, transcripts of conferences and hearings, hearing exhibits, posthearing briefs, and documents which the Board has specifically designated be made a part of the record. The record will at all reasonable times be available for inspection by the parties at the office of the Board.

(b) Except as the Board may otherwise order in its discretion, no proof shall be received in evidence after completion of an oral hearing or, in cases submitted on the record, after notification by the Board that the case is ready for decision.

(c) The weight to be attached to any evidence of record will rest within the sound discretion of the Board. The Board may in any case require either party, with appropriate notice to the other party, to submit additional evidence on any matter relevant to the appeal.

§ 955.15 Discovery—depositions.

(a) *General policy and protective orders.* The parties are encouraged to engage in voluntary discovery procedures. In connection with any deposition or other discovery procedure, the Board may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, and those orders may include limitations on the scope, method, time and place for discovery, and provisions for protecting the secrecy of confidential information or documents.

(b) *When depositions permitted.* After an appeal has been docketed and complaint filed, the parties may mutually agree to, or the Board may, upon application of either party and for good cause shown, order the taking of testimony of any person by deposition upon oral examination or written interrogatories before any officer authorized to administer oaths at the place of examination, for use as evidence or for purpose of discovery. The application for order shall specify whether the purpose of the deposition is discovery or for use as evidence.

(c) *Orders on depositions.* The time, place, and manner of taking depositions shall be as mutually agreed by the parties, or failing such agreement, governed by order of the Board.

(d) *Use as evidence.* No testimony taken by depositions shall be considered as part of the evidence in the hearing of an appeal unless and until such testimony is offered and received in evidence at such hearing. It will not ordinarily be received in evidence if the deponent is present and can testify personally at the hearing. In such instances, however, the deposition may be used to contradict or impeach the testimony of the witness given at the hearing. In cases submitted on the record, the Board may, in its discretion, receive depositions as evidence in supplementation of that record.

(e) *Expenses.* Each party shall bear its own expenses associated with the taking of any deposition.

§ 955.16 Interrogatories to parties, admission of facts, and production and inspection of documents.

(a) *Interrogatories to parties.* After an appeal has been filed with the Board, a party may serve on the other party written interrogatories to be answered separately in writing, signed under oath and returned within 30 days. Upon timely objection by the party, the Board will determine the extent to which the interrogatories will be permitted. The scope and use of interrogatories will be controlled by § 955.15.

(b) *Admission of facts.* After an appeal has been filed with the Board, a party may serve upon the other party a request for the admission of specified facts. Within 30 days after service, the party served shall answer each requested fact or file objections thereto. The factual propositions set out in the request shall be deemed admitted upon the failure of a party to respond to the request for admission.

(c) *Production and inspection of documents.* Upon motion of any party showing good cause therefor, and upon notice, the Board may order the other party to produce and permit the inspection and copying or photographing of any designated documents or objects, not privileged, specifically identified, and their relevance and materiality to the cause or causes in issue explained, which are reasonably calculated to lead to the discovery of admissible evidence. If the parties cannot themselves agree thereon, the Board shall specify just terms and conditions in making the inspection and taking the copies and photographs.

§ 955.17 Service of papers.

Papers shall be served personally or by mailing the same, addressed to the party upon whom service is to be made. Copies of complaints, answers and simultaneous briefs shall be filed directly with the Board. The party filing any other paper with the Board shall send a copy thereof to the opposing party, noting on the paper filed with the Board, or on the letter transmitting the same, that a copy has been so furnished.

HEARINGS

§ 955.18 Where and when held.

Hearings will ordinarily be held in the Washington, D.C. area, except that upon request seasonably made and upon good cause shown, the Board may set the hearing at another location. Hearings will be scheduled at the discretion of the Board with due consideration to the regular order of appeals and other pertinent factors. On request or motion by either party and upon good cause shown, the Board may, in its discretion, advance a hearing.

§ 955.19 Notice of hearings.

The parties shall be given at least 15 days notice of the time and place set for hearings. In scheduling hearings, the Board will give due regard to the desires of the parties and to the requirement for just and inexpensive determination of appeals without unnecessary delay. Notices of hearing shall be promptly acknowledged by the parties.

§ 955.20 Unexcused absence of a party.

The unexcused absence of a party at the time and place set for hearing will not be occasion for delay. In the event of such absence, the hearing will proceed and the case will be regarded as submitted by the absent party as provided in § 955.12.

§ 955.21 Nature of hearings.

Hearings shall be as informal as may be reasonable and appropriate under the circumstances. Appellant and respondent may offer at a hearing on the merits such relevant evidence as they deem appropriate and as would be admissible under the generally accepted rules of evidence applied in the courts of the United States in nonjury trials, subject, however, to the sound discretion of the presiding officer in supervising the extent and manner of presentation of such evidence. In general, admissibility will hinge on relevancy and materiality. Letters or copies thereof, affidavits, or other evidence not ordinarily admissible under the generally accepted rules of evidence, may be admitted in the discretion of the presiding officer. The weight to be attached to evidence presented in any particular form will be within the discretion of the Board, taking into consideration all the circumstances of the particular case. Stipulations of fact agreed upon by the parties may be regarded and used as evidence at the hearing. The parties may stipulate the testimony that would be given by a witness if the witness were present. The Board may in any case require evidence in addition to that offered by the parties.

§ 955.22 Examination of witnesses.

Witnesses before the Board will be examined orally under oath or affirmation, unless the facts are stipulated, or the presiding officer shall otherwise order. If the testimony of a witness is not given under oath, the Board may warn the witness that his statements may be subject to the provisions of Title 18, U.S.C., sections 287 and 1001, and any other provisions of law imposing penalties for knowingly making false representations in connection with claims against the United States or in any matter within the jurisdiction of any department or agency thereof.

§ 955.23 Copies of papers.

When books, records, papers, or documents have been received in evidence, a true copy thereof or of such part thereof as may be material or relevant may be substituted therefor, during the hearing or at the conclusion thereof.

§ 955.24 Posthearing briefs.

Posthearing briefs may be submitted upon such terms as may be agreed upon by the parties and the presiding officer at the conclusion of the hearing. Ordinarily, they will be simultaneous briefs, exchanged within 30 days after receipt of transcript.

§ 955.25 Transcript of proceedings.

Testimony and argument at hearings shall be reported verbatim, unless the Board otherwise orders. Transcripts or copies of the proceedings shall be supplied to the parties at such rates as may be fixed by contract between the Reporter and the U.S. Postal Service.

§ 955.26 Withdrawal of exhibits.

After a decision has become final the Board may, upon request and after notice to the other party, in its discretion, permit the withdrawal of original exhibits, or any part thereof, by the party entitled thereto. The substitution of true copies of exhibits or any part thereof may be required by the Board in its discretion as a condition of granting permission for such withdrawal.

REPRESENTATION

§ 955.27 The appellant.

An individual appellant may appear before the Board in person, a corporation by an officer thereof, a partnership or joint venture by a member thereof, or any of these by an attorney at law duly licensed in any State, commonwealth, territory, or in the District of Columbia. An attorney representing an appellant shall file a written notice of appearance with the Board.

§ 955.28 The respondent.

Postal Service counsel, designated by the General Counsel, will represent the interest of the Government before the Board. Counsel shall file a notice of appearance with the Board, and notice thereof will be given appellant or his attorney in the form specified by the Board from time to time. Whenever at any time it appears that appellant and Postal Service Counsel are in agreement as to disposition of the controversy, the Board may suspend further processing of the appeal: *Provided, however,* That if the Board is advised thereafter by either party that the controversy has not been disposed of by agreement, the case shall be restored to the Board's calendar without loss of position.

DECISIONS

§ 955.29 Decisions.

Decisions of the Board will be made in writing and authenticated copies thereof will be forwarded simultaneously to both parties. The rules of the Board and all final orders and decisions shall be open for public inspection at the offices of the Board in Washington, D.C. Decisions of the Board will be made solely upon the record, as described in § 955.14.

MOTION FOR RECONSIDERATION

§ 955.30 Motion for reconsideration.

A motion for reconsideration, if filed by either party, shall set forth specifically the ground or grounds relied upon to sustain the motion, and shall be filed within 30 days from the date of the receipt of a copy of the decision of the Board by the party filing the motion.

DISMISSALS

§ 955.31 Dismissal without prejudice.

In certain cases, appeals docketed before the Board are required to be placed in a suspense status and the Board is unable to proceed with disposition thereof for reasons not within the control of the Board. In any such case where the suspension has continued, or it appears that it will continue, for an inordinate length of time, the Board may, in its discretion, dismiss such appeals from its docket without prejudice to their restoration when the cause of suspension has been removed. Unless either party or the Board acts within three years to reinstate any appeal dismissed without prejudice, the dismissal shall be deemed with prejudice.

§ 955.32 Dismissal for failure to prosecute.

Whenever a record discloses the failure of either party to file documents required by these rules, respond to notices or correspondence from the Board, comply with orders of the Board, or otherwise indicates an intention not to continue the prosecution or defense of an appeal, the Board may issue an order requiring the offending party to show cause why the appeal should not be either dismissed or granted, as appropriate. If the offending party shall fail to show such cause, the Board may take such action as it deems reasonable and proper under the circumstances.

Ex Parte Communications

§ 955.33 Ex parte communications.

No member of the Board or of the Board's staff shall entertain, nor shall any person directly or indirectly involved in an appeal submit to the Board or the Board's staff, off the record, any evidence, explanation, analysis, or advice, whether written or oral, regarding any matter at issue in an appeal. This provision does not apply to consultation among Board members nor to ex parte communications concerning the Board's administrative functions or procedures.

Sanctions

§ 955.34 Sanctions.

If any party fails or refuses to obey an order issued by the Board, the Board may make such order in regard to the failure as it considers necessary to the just and expeditious conduct of the appeal.

Effective Date and Applicability

§ 955.35 Effective date and applicability.

(a) Sections 955.1 through 955.34 took effect on February 18, 1976. Except as otherwise directed by the Board, these rules shall not apply to appeals docketed prior to their effective date.

(b) Pursuant to The Contract Disputes Act of 1978, Pub. L. 95-563, §§ 955.36 and 955.37 apply to appeals relating to contracts entered into on or after March 1, 1979. At the election of the appellant, §§ 955.36 and 955.37 shall also apply to appeals relating to contracts entered into before March 1, 1979, if the Contracting Officer's final decision is dated March 1, 1979, or thereafter. When § 955.36 is applicable it supersedes § 955.13.

[44 FR 13014, Mar. 9, 1979]

§ 955.36 Optional small claims (expedited) and accelerated procedures.

(a) These procedures are available solely at the election of the appellant.

(b) Elections to Utilize SMALL CLAIMS (EXPEDITED) and ACCELERATED Procedure.

(1) In appeals where the amount in dispute is $10,000 or less, the appellant may elect to have the appeal processed under a SMALL CLAIMS (EXPEDITED) procedure requiring decision of the appeal, whenever possible, within 120 days after the Board receives written notice of the appellant's election to utilize this procedure. The details of this procedure appear in paragraph (c) of this section. An appellant may elect the ACCELERATED procedure rather than the SMALL CLAIMS (EXPEDITED) procedure for any appeal eligible for the SMALL CLAIMS (EXPEDITED) procedure.

(2) In appeals where the amount in dispute is $50,000 or less, the appellant may elect to have the appeal processed under an ACCELERATED procedure requiring decision of the appeal, whenever possible, within 180 days after the Board receives written notice of the appellant's election to utilize this procedure. The details of this procedure appear in paragraph (d) of this section.

(3) The appellant's election of either the SMALL CLAIMS (EXPEDITED) procedure or the ACCELERATED procedure may be made either in his notice of appeal or by other written notice at any time thereafter.

(4) In deciding whether the SMALL CLAIMS (EXPEDITED) procedure or the ACCELERATED procedure is applicable to a given appeal the Board shall determine the amount in dispute by adding the amount claimed by the appellant against the respondent to the amount claimed by respondent against the appellant. If either party making a claim against the other party does not otherwise state in writing the amount of its claim, the amount claimed by such party shall be the maximum amount which such party represents in writing to the Board that it can reasonably expect to recover against the other.

(c) The SMALL CLAIMS (EXPEDITED) Procedure.

(1) This procedure shall apply only to appeals where the amount in dispute is $10,000 or less as to which the appellant has elected the SMALL CLAIMS (EXPEDITED) procedure.

(2) In cases proceeding under the SMALL CLAIMS (EXPEDITED) procedure, the following time periods shall apply (i) within ten days from the respondent's first receipt from either the appellant or the Board of a copy of the appellant's notice of election of the SMALL CLAIMS (EXPEDITED) procedure, the respondent shall send the Board a copy of the contract, the contracting officer's final decision, and the appellant's claim letter or letters, if any; (ii) within 15 days after the Board has acknowledged receipt of the notice of election, either party desiring an oral hearing shall so inform the Board. If either party requests an oral hearing, the Board shall promptly schedule such a hearing for a mutually convenient time consistent with administrative due process and the 120-day limit for a decision, at a place determined under § 955.18. If a hearing is not requested by either party within the time prescribed by this Rule, the appeal shall be deemed to have been submitted under § 955.12 without a hearing.

(3) In cases proceeding under the SMALL CLAIMS (EXPEDITED) procedure, pleadings, discovery, and other prehearing activity will be allowed only as consistent with the requirement to conduct the hearing on the date scheduled or, if no hearing is scheduled, to close the record on a date that will allow decision within the 120-day limit. The Board, in its discretion, may shorten time periods prescribed elsewhere in these Rules as necessary to enable the Board to decide the appeal within 120 days after the Board has received the appellant's notice of election of the SMALL CLAIMS (EXPEDITED) procedure. In so doing the Board may reserve whatever time up to 30 days it considers necessary for preparation of the decision.

(4) Written decision by the Board in cases processed under the SMALL CLAIMS (EXPEDITED) procedure will be short and contain only summary findings of fact and conclusions. Decisions will be rendered for the Board by a single Administrative Judge. If there has been a hearing, the Administrative Judge presiding at the hearing may, in his discretion, at the conclusion of the hearing and after entertaining such oral arguments as he deems appropriate, render on the record oral summary findings of fact, conclusions, and a decision of the Appeal. Whenever such an oral decision is rendered, the Board will subsequently furnish the parties a typed copy of such oral decision for the record and payment purposes and to establish the date of commencement of the period for filing a motion for reconsideration under § 955.20.

(5) Decisions of the Board under the SMALL CLAIMS (EXPEDITED) procedure will not be published, will have no value as precedents, and in the absence of fraud, cannot be appealed.

(d) The ACCELERATED Procedure

(1) This procedure shall apply only to appeals where the amount in dispute is $50,000 or less as to which the appellant has made the requisite election.

(2) In cases proceeding under the ACCELERATED procedure, the parties are encouraged, to the extent possible consistent with adequate presentation of their factual and legal positions, to waive pleadings, discovery, and briefs. The Board, in its discretion, may shorten time periods prescribed elsewhere in these Rules as necessary to enable the Board to decide the appeal within 180 days after the Board has received the appellant's notice of election of the ACCELERATED procedure, and may reserve 30 days for preparation of the decision.

(3) Written decisions by the Board in cases processed under the ACCELERATED procedure will normally be short and contain only summary findings of fact and conclusions. Decisions will be rendered for the Board by a single Administrative Judge with the concurrence of the Chairman or Vice Chairman or other designated Administrative Judge, or by a majority among these two and an additional designated member in case of disagree-

ment. Alternatively, in cases where the amount in dispute is $10,000 or less as to which the ACCELERATED procedure has been elected and in which there has been a hearing, the single Administrative Judge presiding at the hearing may, with the concurrence of both parties, at the conclusion of the hearing and after entertaining such oral arguments as he deems appropriate, render on the record oral summary findings of fact, conclusions, and a decision of the appeal. Whenever such an oral decision is rendered, the Board will subsequently furnish the parties a typed copy of such oral decision for record and payment purposes and to establish the date of commencement of the period for filing a motion for reconsideration under § 955.30.

(e) Motions for Reconsideration in Cases Arising Under § 955.36. Motions for Reconsideration of cases decided under either the SMALL CLAIMS (EXPEDITED) procedure or the ACCELERATED procedure need not be decided within the time periods prescribed by this § 955.36 for the initial decision of the appeal, but all such motions shall be processed and decided rapidly so as to fulfill the intent of this Rule.

[44 FR 13014, Mar. 9, 1979; 44 FR 23828, Apr. 23, 1979]

§ 955.37 Subpoenas.

(a) *General.* Upon written request of either party filed with the docket clerk or on his own initiative, the Administrative Judge to whom a case is assigned or who is otherwise designated by the Chairman may issue a subpoena requiring:

(1) *Testimony at a deposition.* The deposing of a witness in the city or county where he resides or is employed or transacts his business in person, or at another location convenient for him that is specifically determined by the Board;

(2) *Testimony at a hearing.* The attendance of a witness for the purpose of taking testimony at a hearing; and

(3) *Production of books and papers.* In addition to (1) and (2), the production by the witness at the deposition or hearing of books and papers designated in the subpoena.

(b) *Voluntary cooperation.* Each party is expected (1) To cooperate and make available witnesses and evidence under its control as requested by the other party, without issuance of a subpoena, and (2) To secure voluntary attendance of desired third-party books, papers, documents, or tangible things whenever possible.

(c) *Requests for subpoenas.* (1) A request for a subpoena shall normally be filed at least:

(i) 15 days before a scheduled deposition where the attendance of a witness at a deposition is sought;

(ii) 30 days before a scheduled hearing where the attendance of a witness at a hearing is sought.

In its discretion the Board may honor requests for subpoenas not made within these time limitations.

(2) A request for a subpoena shall state the reasonable scope and general relevance to the case of the testimony and of any books and papers sought.

(d) *Requests to quash or modify.* Upon written request by the person subpoenaed or by a party, made within 10 days after service but in any event not later than the time specified in the subpoena for compliance, the Board may (1) quash or modify the subpoena if it is unreasonable and oppressive or for other good cause shown, or (2) require the person in whose behalf the subpoena was issued to advance the reasonable cost of producing subpoenaed books and papers. Where circumstances require, the Board may act upon such a request at any time after a copy has been served upon the opposing party.

(e) *Form; issuance.* (1) Every subpoena shall state the name of the Board and the title of the appeal and shall command each person to whom it is directed to attend and give testimony, and if appropriate, to produce specified books and papers at a time and place therein specified. In issuing a subpoena to a requesting party, the Administrative Judge shall sign the subpoena and may in his discretion, enter the name of the witness and otherwise leave it blank. The party to whom the subpoena is issued shall complete the subpoena before service.

(2) Where the witness is located in a foreign country, a letter rogatory or subpoena may be issued and served under the circumstances and in the manner provided in 28 U.S.C. 1781-1784.

(f) *Service.* (1) The party requesting issuance of a subpoena shall arrange for service.

(2) A subpoena requiring the attendance of a witness at a deposition or hearing may be served at any place. A subpoena may be served by a United States marshal or deputy marshal, or by any other person who is not a party and not less than 18 years of age. Service of a subpoena upon a person named therein shall be made by personally delivering a copy to that person and tendering the fees for one day's attendance and the mileage provided by 28 U.S.C. 1821 or other applicable law.

(3) The party at whose instance a subpoena is issued shall be responsible for the payment of fees and mileage of the witness and of the officer who serves the subpoena. The failure to make payment of such charges on demand may be deemed by the Board as a sufficient ground for striking the testimony of the witness and the evidence the witness has produced.

(g) *Contumacy or refusal to obey a subpoena.* In case of contumacy or refusal to obey a subpoena by a person who resides, if found, or transacts business within the jurisdiction of a U.S. District Court, the Board will apply to the Court through the Attorney General of the United States for an order requiring the person to appear before the Board or a member thereof to give testimony or produce evidence or both. Any failure of any such person to obey the order of the Court may be punished by the Court as a contempt thereof.

[44 FR 13015, Mar. 9, 1979]

PART 956—RULES OF PRACTICE IN PROCEEDINGS RELATIVE TO DISCIPLINARY ACTION FOR VIOLATION OF RESTRICTIONS ON POST-EMPLOYMENT ACTIVITY

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AUTHORITY: 18 U.S.C. 207(j), 39 U.S.C. 204, 401.

SOURCE: 49 FR 40771, Oct. 17, 1984, unless otherwise noted.

§ 956.1 Authority for rules.

The rules in this part are issued by the Judicial Officer of the Postal Service pursuant to authority delegated by the Postmaster General (39 U.S.C. 204, 401).

§ 956.2 Scope of rules.

The rules in this part shall be applicable in all formal proceedings before the Postal Service pertaining to proposed disciplinary action initiated under § 447.34(e) of this title.

§ 956.3 Definitions.

(a) The term "Ethical Conduct Officer" has the same meaning as in § 447.31 of this title and includes his authorized representative.

(b) "Respondent" means any individual who has been served a written notice of proposed disciplinary action pursuant to § 447.34 of this title.

(c) The "Recorder" means the Recorder of the U.S. Postal Service, 475 L'Enfant Plaza West, SW., Washington, DC 20260.

§ 956.4 Initiation of proceedings.

(a) The Ethical Conduct Officer shall initiate a proceeding by serving upon the proposed respondent a written notice of proposed disciplinary action in the manner hereinafter (§ 956.9(d)) provided for the service of all other papers.

(b) The notice shall:

(1) State that disciplinary action is being proposed;

(2) Inform the respondent of the subsection of section 207 (18 U.S.C. 207) that he is alleged to have violated and of the basis of the allegation;

(3) Inform the respondent of the disciplinary action which is proposed;

(4) Advise the respondent that he may oppose the proposed disciplinary action by filing an answer within 20 days following receipt of the notice;

(5) State that the disciplinary action will not become effective until after a final agency decision is issued;

(6) Inform the respondent of the rules in this part, a copy of which shall be enclosed with the notice.

(c) If no answer is filed within 20 days following the receipt of the notice, the proposed disciplinary action set forth in the notice shall become the final agency decision without further notice to the respondent.

§ 956.5 Answer.

Within 20 days from receipt of the notice of proposed disciplinary action, the respondent may file an answer setting forth simple, concise, and direct statements admitting, denying or explaining each of the allegations set forth in the notice.

§ 956.6 Hearing election.

Either party may, within, 10 days following the filing of the respondent's answer, request a hearing. If a timely request is not made, the case shall be submitted on the record without a hearing. Submission of the case without a hearing does not relieve the parties of the necessity of proving the facts supporting their allegations or defenses. Affidavits, depositions, admissions, answers to interrogatories and stipulations may be employed to supplement the pleadings which constitute the record. The presiding officer may permit such submission to be supplemented by oral argument (transcribed if requested) and by proposed findings of fact and conclusions of law.

§ 956.7 Notice of hearing.

(a) When a request for a hearing is filed, a notice of hearing, stating the time and place thereof and advising the respondent of the consequences of a failure to appear at the hearing, will be issued (see § 956.10). In setting a hearing date, due regard shall be given to the respondent's need for:

(1) Adequate time to prepare a defense properly; and

(2) An expeditious resolution of allegations that may be damaging to his or her reputation. Subject to those considerations, whenever practicable, the hearing date shall be within 30 days of the date of the notice of hearing.

(b) The notice of proposed disciplinary action and the answer together with the reply, if any, shall become the pleadings in any proceeding in which a hearing is held.

§ 956.8 Reply.

Not more than 15 days from the service of the answer, the Ethical Conduct Officer may submit a reply.

§ 956.9 Service and filing of documents for the record.

(a) Each party shall file with the Recorder pleadings, motions, orders and other documents for the record. The Recorder shall cause copies to be served promptly on other parties to the proceeding and on the presiding officer.

(b) The parties shall submit four copies of all documents unless otherwise ordered by the presiding officer. One copy shall be signed as the original.

(c) Documents shall be dated and shall state the docket number and title of the proceeding. Any pleading or other document required by these rules or by order of the presiding officer to be filed by a specified date shall be filed with the Recorder on or before such date. The filing date shall be entered thereon by the Recorder.

(d) Service of all papers shall be effected by mailing the same, postage prepaid registered or certified mail, return receipt requested, or by causing said notice to be personally served on the proposed respondent by an authorized representative of the Postal Service. In the case of personal service, the person making service shall, if possible, secure from the proposed respondent or his agent, a written acknowledgment of receipt of said notice, showing the date and time of such receipt. If the person upon whom service is made will not acknowledge receipt, the person effecting service shall execute a statement, showing the time, place and manner of service, which shall constitute evidence of service. The acknowledgment, statement, or return receipt, when service is effected by mail, shall be made a part of the record by the Ethical Conduct Officer. The date of delivery, as shown by the acknowledgment or statement of personal service or the return receipt, shall be the date of service.

§ 956.10 Respondent's failure to appear at the hearing.

If the respondent shall fail to appear at the hearing, the presiding officer shall receive the Ethical Conduct Officer's evidence and render a decision without requirement of further notice to the respondent.

§ 956.11 Amendment of pleadings.

(a) By consent of the parties, a pleading may be amended at any time. Also, a party may move to amend a pleading at any time prior to the close of the hearing, provided that the proposed amendment is reasonably within the scope of the proceeding.

(b) When issues not raised by the pleadings but reasonably within the scope of the proceedings initiated by the notice of proposed disciplinary action are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendments, as may be necessary to make the pleadings conform to the evidence and to raise such issues, shall be allowed at any time upon the motion of any party.

(c) If a party objects to the introduction of evidence at the hearing on the ground that it is not within the issues framed by the pleadings, but fails to satisfy the presiding officer that an amendment of the pleadings would prejudice him on the merits, the presiding officer may allow the pleadings to be amended and may grant a continuance to enable the objecting party to rebut the evidence presented.

(d) The presiding officer may, upon reasonable notice and upon such terms as are just, permit service of a supplemental pleading setting forth transactions, occurrences, or events which have transpired since the date of the pleading sought to be supplemented and which are relevant to any of the issues involved.

§ 956.12 Continuances and extensions.

Continuances and extensions will not be granted by the presiding officer except for good cause shown.

§ 956.13 Hearings.

(a) Hearings are held at the headquarters of the Postal Service, Washington, DC 20260, or other locations designated by the presiding officer.

(b) A party may, not later than 7 days prior to the scheduled date of a hearing, file a request that such hearing be held at a place other than that designated in the notice of hearing. He shall support his request with a statement outlining:

(1) The evidence to be offered in such place;

(2) The names and addresses of the witnesses who will testify;

(3) The reasons why such evidence cannot be produced at the place designated in the notice of hearing.

The presiding officer shall give consideration to the convenience and necessity of the parties and the relevance of the evidence to be offered.

§ 956.14 Appearances.

(a) A respondent may appear and be heard in person or by attorney.

(b) An attorney may practice before the Postal Service in accordance with applicable rules issued by the Judicial Officer (see Part 951 of this chapter).

(c) When a respondent is represented by an attorney, all pleadings and other papers subsequent to the notice of proposed disciplinary action shall be mailed to the attorney.

(d) All counsel shall promptly file notices of appearance. Changes of the respondent's counsel shall be recorded by notices from retiring and succeeding counsel and from the respondent.

(e) After an answer has been filed pursuant to the rules in this part, the Law Department shall represent the Ethical Conduct Officer in further proceedings relative to the hearing and shall in its notice of appearance identify the individual member of such department who has been assigned to handle the case on its behalf.

§ 956.15 Presiding officer.

(a) The presiding officer shall be an Administrative Law Judge qualified in accordance with law. The Chief Administrative Law Judge shall assign cases under this part upon rotation so far as practicable. The Judicial Officer may, for good cause found, preside at the reception of evidence upon request of either party.

(b) The presiding officer shall have authority to:

(1) Administer oaths and affirmations;

(2) Examine witnesses;

(3) Rule upon offers of proof, admissibility of evidence, and matters of procedure;

(4) Order any pleading amended upon motion of a party at any time prior to the close of the hearing;

(5) Maintain discipline and decorum and exclude from the hearing any person acting in an indecorous manner;

(6) Require the filing of briefs or memoranda of law on any matter upon which he is required to rule;

(7) Order prehearing conferences for the purposes of the settlement or simplification of issues by the parties;

(8) Permit oral argument by any party;

(9) Order the proceeding reopened at any time prior to his decision for the receipt of additional evidence;

(10) Render an initial decision, if the presiding officer is not the Judicial Officer, which becomes the final agency decision unless a timely appeal is taken; the Judicial Officer may issue a tentative or a final decision;

(11) Take such other and further action as may be necessary properly to preside over the proceeding and render decision therein.

§ 956.16 Burden of proof and evidence.

(a) Each party may introduce and examine witnesses and submit physical evidence. The Ethical Conduct Officer has the burden of proof in any proceeding under this part and must establish a violation by a preponderance of the evidence.

(b) Except as otherwise provided in these rules, the Federal Rules of Evidence shall be applicable to the hearings conducted under this part. Such rules may be relaxed, however, to the extent that the presiding officer deems proper to insure a fair hearing.

(c) Testimony shall be under oath or affirmation, and witnesses shall be subject to cross-examination.

(d) Agreed statements of fact may be received in evidence.

(e) Official notice or knowledge may be taken of the types of matters of which judicial notice or knowledge may be taken.

(f) Each party may present oral argument.

§ 956.17 Discovery—depositions.

(a) The parties are encouraged to engage in voluntary discovery procedures. In connection with any deposition or other discovery procedure, the presiding officer may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense; and those orders may include limitations on the scope, method, time and place for discovery, and provisions for protecting the secrecy of confidential information or documents.

(b) After an answer has been filed, the parties may mutually agree to, or the presiding officer may, upon application of either party and for good cause shown, order the taking of the testimony of any person by deposition upon oral examination or written interrogatories before any officer authorized to administer oaths at the place of examination, for use as evidence or for purposes of discovery. The application for order shall specify whether the purpose of the deposition is discovery or for use as evidence.

(c) The time, place, and manner of taking depositions shall be mutually agreed by the parties or, failing such agreement, governed by order of the presiding officer.

(d) No testimony taken by depositions shall be considered as part of the evidence in a hearing unless and until such testimony is offered and received in evidence at such hearing. It will not ordinarily be received in evidence if the deponent is present and can testify personally at the hearing. In such instances, however, the deposition may be used to contradict or impeach the testimony of the witness given at the hearing. In cases submitted on the record, the presiding officer may, in his discretion, receive depositions as evidence in supplementation of that record.

(e) Each party shall bear its own expenses associated with the taking of any deposition.

§ 956.18 Interrogatories to parties, admission of facts, and production of documents.

(a) After an answer has been filed, a party may serve on the other party written interrogatories to be answered separately in writing, signed under oath and returned within 30 days. Upon timely objection by the party, the presiding officer will determine the extent to which the interrogatories will be permitted. The scope and use of interrogatories will be controlled by § 956.17.

(b) After an answer has been filed, a party may serve upon the other party a request for the admission of specified facts. Within 30 days after service, the party served shall answer each requested fact or file objections thereto. The factual propositions set out in the request shall be deemed admitted upon the failure of a party to respond to the request for admission.

(c) Upon motion of any party showing good cause therefore, and upon notice, the presiding officer may order the other party to produce and permit the inspection and copying or photocopying of any designated documents or objects, not privileged, specifically identified, and their relevance and materiality to the cause or causes in issue explained, which are reasonably calculated to lead to the discovery of admissible evidence. If the parties cannot themselves agree thereon, the presiding officer shall specify just terms and conditions in making the inspection and making the copies and photographs.

§ 956.19 Transcript.

Testimony and argument at hearings shall be reported verbatim, unless the presiding officer otherwise orders. Transcripts or copies of the proceedings shall be supplied to the parties at such rates as may be fixed by contract between the reporter and the Postal Service.

§ 956.20 Proposed findings and conclusions.

(a) Each party to a proceeding, except one who fails to appear at the hearing may, unless the presiding officer orders otherwise, submit proposed findings of fact, conclusions of law and supporting reasons, either in oral or written form at the discretion of the presiding officer. The presiding officer may also require parties to any proceeding to submit proposed findings of fact and conclusions of law with supporting reasons. Unless ordered otherwise by the presiding officer, the date set for filing of proposed findings of fact and conclusions of law shall be within 15 days after the delivery of the official transcript to the Recorder who shall notify both parties of the date of its receipt. The filing date for proposed findings shall be the same for both parties. If not submitted by such date, or unless an extension of time for the filing thereof is granted, they will not be included in the record or given consideration.

(b) Proposed findings of fact shall be set forth in serially numbered paragraphs and shall state with particularity all evidentiary facts in the record with appropriate citations to the transcript or exhibits supporting the proposed findings. Each proposed conclusion shall be separately stated.

§ 956.21 Decisions.

(a) A written initial decision by an Administrative Law Judge shall be rendered with all due speed. The initial decision shall include findings of fact and conclusions of law, with the reasons therefor, upon all the material issues of fact or law presented on the record, and an appropriate order. A tentative decision shall become the final decision of the Postal Service unless exceptions are filed in accordance with § 956.22.

(b) When the Judicial Officer presides at the hearing, he shall issue a final or a tentative decision. Such decision shall include findings of fact and conclusions of law, with the reasons therefor, upon all the material issues of fact or law presented on the record, and an appropriate order. A tentative decision shall become the final decision of the Postal Service unless exceptions are filed in accordance with § 956.22.

§ 956.22 Exceptions to initial decision or tentative decision.

(a) A party in a proceeding presided over by an Administrative Law Judge, except a party who failed to file an answer, may appeal to the Judicial Officer by filing exceptions in a brief on appeal within 15 days from the receipt of the Administrative Law Judge's written initial decision.

(b) A party in a proceeding presided over by the Judicial Officer, except one who has failed to file an answer, may file exceptions within 15 days from the receipt of the Judicial Officer's written tentative decision.

(c) Upon receipt of the brief on appeal from an initial decision of an Administrative Law Judge, the Recorder shall promptly transmit the record to the Judicial Officer. The date for filing the reply to a brief on appeal or to a brief in support of exceptions to a tentative decision by the Judicial Officer is 10 days after the receipt thereof. No additional briefs shall be received unless requested by the Judicial Officer.

(d) Briefs on appeal or in support of exceptions and replies thereto shall be filed in quadruplicate with the Recorder and contain the following matter in the order indicated:

(1) A subject index of the matters presented, with page references; a table of cases alphabetically arranged; a list of statutes and texts cited, with page references.

(2) A concise abstract or statement of the case.

(3) Numbered exceptions to specific findings of fact or conclusions of law of the presiding officer.

(4) A concise argument clearly setting forth points of fact and of law relied upon in support of, or in opposition to, each exception taken, together with specific references to the pertinent part of the record and the legal or other authorities relied upon.

(e) Unless permission is granted by the Judicial Officer, no brief on appeal or in support of exceptions shall exceed 50 printed or 100 typewritten pages double spaced.

(f) The Judicial Officer will extend the time to file briefs only upon motion for good cause found. The movant shall be promptly notified of the Judicial Officer's decision on the motion.

§ 956.23 Judicial Officer.

The Judicial Office is authorized:

(a) To act as presiding officer at hearings;

(b) To render tentative decisions;

(c) To render final decisions of the Postal Service;

(d) To refer the record in any proceedings to the Postmaster General or the Deputy Postmaster General who will make the final decision of the Postal Service; and

(e) To revise or amend these rules of practice. In determining appeals from initial decisions or exceptions to tentative decisions, the entire official record will be considered before a final decision of the Postal Service is rendered. Before rendering a final decision of the Postal Service, the Judicial Officer may order the hearing reopened for the presentation of additional evidence by the parties.

§ 956.24 Motion for reconsideration.

Within 10 days from the date thereof, or such longer period as may be fixed by the Judicial Officer, either party may file a motion for reconsideration of the final agency decision. Each motion for reconsideration shall be accompanied by a brief clearly setting forth the points of fact and of law relied upon in support of said motion. The Judicial Officer, in his discretion, may hold a hearing on the issues raised by the motion.

§ 956.25 Modification or revocation of orders.

A party against whom an order has been issued may file an application setting forth reasons which he believes warrant the modification or revocation of the order. The Recorder shall transmit a copy of the application to the Ethical Conduct Officer who shall file a written reply. A copy of the reply shall be sent to the applicant by the Recorder. The Judicial Officer, in his discretion, may hold a hearing on the issues raised by the application. Thereafter an order granting or denying such application will be issued by the Judicial Officer.

§ 956.26 Computation of time.

A designated period of time under the rules of this part excludes the day the period begins and includes the last day of the period unless the last day is a Saturday or Sunday or legal holiday, in which event the period runs until the close of business on the next business day.

§ 956.27 Official record.

The transcript of testimony together with all pleadings, orders, exhibits, briefs, and other documents filed in the proceeding shall constitute the official record of the proceeding.

§ 956.28 Ex parte communications.

The provisions of 5 U.S.C. 551(14), 556(d) and 557(d) prohibiting ex parte communications are made applicable to proceedings under these rules of practice.

PART 957—RULES OF PRACTICE IN PROCEEDINGS RELATIVE TO DEBARMENT AND SUSPENSION FROM CONTRACTING

Sec.

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AUTHORITY: 39 U.S.C. 204, 401.

SOURCE: 36 FR 11574, June 16, 1971, unless otherwise noted.

§ 957.1 Authority for rules.

The rules in this part are issued by the Judicial Officer of the Postal Service pursuant to authority delegated by the Postmaster General (39 U.S.C. secs. 204, 401; sec. 1, part 6 of the Postal Contracting Manual).

[36 FR 11574, June 16, 1971, as amended at 41 FR 19309, May 12, 1976]

§ 957.2 Scope of rules.

The rules in this part shall be applicable in all formal proceedings before the Postal Service pertaining to hearings initiated under sec. 1, part 6 of the Postal Contracting Manual.

[36 FR 11574, June 16, 1971, as amended at 41 FR 19309, May 12, 1976]

§ 957.3 Definitions.

(a) The term "Department Head" means the head of any Department of the Postal Service or his representative for the purpose of carrying out the provisions of sec. 1, part 6 of the Postal Contracting Manual.

(b) The term "General Counsel" includes his authorized representative.

(c) The term "Judicial Officer" includes the Acting Judicial Officer.

(d) "Debarment" means, in general, an exclusion from Government contracting and subcontracting for a reasonable, specified period of time commensurate with the seriousness of the offense or failure, or the inadequacy of performance.

(e) "Suspension" means a disqualification from Government contracting and subcontracting for a temporary period of time because a concern or individual is suspected upon adequate evidence of engaging in criminal, fraudulent, or seriously improper conduct.

(f) "Respondent" means any individual, firm or other entity which has been served a written notice of proposed debarment pursuant to Section 1, part 6 of the Postal Contracting Manual.

(g) The "Docket Clerk" means the Docket Clerk of the U.S. Postal Service, 475 L'Enfant Plaza West, SW., Washington, DC 20260.

[36 FR 11574, June 16, 1971, as amended at 38 FR 17217, June 29, 1973; 41 FR 19309, May 12, 1976]

§ 957.4 Initiation of debarment proceedings.

(a) A Department Head shall initiate a debarment proceeding by serving upon the proposed Respondent a written notice of proposed debarment in the manner hereinafter (§ 957.8(d)) provided for the service of all other papers.

(b) The notice shall state:

(1) That debarment is being considered;

(2) The reasons for the proposed debarment;

(3) The period of debarment and the proposed effective date thereof;

(4) That the debarment will not become effective until after a hearing if such hearing is requested within 20 days following the receipt of the notice; and

(5) That the request for a hearing is to be submitted in the manner prescribed by the rules in this part, a copy of which shall be enclosed with the notice.

(c) If no hearing is requested within 20 days following the receipt of the notice, the action of the Department Head set forth in the notice shall become the final agency determination without further notice to the Respondent.

(d) The party against which a final agency determination has been entered pursuant to paragraph (c) of this section shall, however, at any time have the privilege of reopening a case for the limited purpose of contesting the issue of service. Such party's contentions on that issue shall be addressed to the Judicial Officer in the same manner as a request for a hearing (see § 957.5). The Judicial Officer may require such additional showings or proof as he may deem necessary on the issue of service and shall reopen any debarment proceeding previously closed pursuant to paragraph (c) of this section if he shall find that service was incomplete or otherwise failed to adequately advise of the pendency of the proposed debarment.

§ 957.5 The request for a hearing.

A respondent may, within 20 days following the receipt of a written notice of proposed debarment, file a request for a hearing before the Judicial Officer. The request shall be addressed to the presiding officer through the Department Head who initiated the debarment proceeding and shall be accompanied by a concise statement admitting, denying or explaining each of the allegations set forth in the notice of proposed debarment and stating the relief desired.

§ 957.6 Order relative to hearing.

(a) The Judicial Officer shall issue an order granting the Respondent's request for a hearing, establishing the time and place thereof and advising the Respondent of the consequences of a failure to appear at the hearing (see § 957.9). Whenever practicable, the hearing date shall be within 30 days of the date of the Judicial Officer's order relative to hearing.

(b) The notice of proposed debarment and the request for a hearing together with the reply, if any, shall become the pleadings in any proceeding in which the Judicial Officer orders a hearing to be held.

§ 957.7 Reply.

Not more than 15 days from the service of the request for a hearing, the General Counsel may submit a reply on behalf of the Department Head who initiated the debarment proceeding.

§ 957.8 Service and filing documents for the record.

(a) Each party shall file with the Docket Clerk pleadings, motions, orders and other documents for the record. The Docket Clerk shall cause copies to be served promptly on other parties to the proceeding and on the Judicial Officer.

(b) The parties shall submit four copies of all documents unless otherwise ordered by the Judicial Officer. One copy shall be signed as the original.

(c) Documents shall be dated and shall state the docket number and title of the proceeding. Any pleading or other document required by order of the Judicial Officer to be filed by a specified date shall be served upon the Docket Clerk on or before such date. The date of such service shall be the filing date and shall be entered thereon by the Docket Clerk.

(d) Service of all papers shall be effected by mailing the same, postage prepaid registered, or certified mail, return receipt requested, or by causing said notice to be personally served on the proposed Respondent by an authorized representative of the Department. In the case of personal service the person making service shall secure from the proposed Respondent or his agent, a written acknowledgment of receipt of said notice, showing the date and time of such receipt. Said acknowledgment (or the return receipt where service is effectuated by mail) shall be made a part of the record by the Department Head initiating the debarment proceeding. The date of delivery, as shown by the acknowledgment of personal service or the return receipt, shall be the date of service.

§ 957.9 Respondent's failure to appear at the hearing.

If the Respondent shall fail to appear at the hearing, the Judicial Officer shall receive the Department Head's evidence and render a Postal Service Decision without requirement of further notice to the Respondent.

[36 FR 11574, June 16, 1971, as amended at 37 FR 23422, Nov. 3, 1972]

§ 957.10 Respondent already debarred by another Government agency.

(a) When a Department Head proposes to debar a firm or individual already debarred by another Government agency for a term concurrent with such debarment, the debarment proceedings before the Postal Service may be based entirely upon the record of facts obtained from such other agency or upon such facts and additional other facts. In such cases the facts obtained from the other agency shall be considered as established, but the party to be debarred shall have opportunity to present information to the Judicial Officer and to explain why the debarment by the Postal Service should not be imposed.

(b) Where the Department Head initiating the debarment proceeding relies:

(1) Upon the provisions of paragraph (a) of this section, or

(2) Upon all or part of the record of the proposed Respondent's previous debarment by another Government agency, in initiating such proceeding, the notice of proposed debarment shall contain a statement so stating in

sufficient detail to apprise the Respondent of the extent of such reliance.

(c) The Department Head's reliance upon provisions of paragraph (a) of this section, stated in conformity with the directions set forth in paragraph (b) of this section does not deprive the Respondent of the right to request the Judicial Officer to grant a hearing pursuant to these rules, nor the Judicial Officer the full discretion to grant or deny such request.

§ 957.11 Amendment of pleadings.

(a) By consent of the parties a pleading may be amended at any time. Also, a party may move to amend a pleading at any time prior to the close of the hearing: *Provided*, That the proposed amendment is reasonably within the scope of the proceeding.

(b) When issues not raised by the pleadings but reasonably within the scope of the proceedings initiated by the notice of proposed debarment are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendments as may be necessary to make the pleadings conform to the evidence and to raise such issues shall be allowed at any time upon the motion of any party.

(c) If a party objects to the introduction of evidence at the hearing on the ground that it is not within the issues framed by the pleadings, but fails to satisfy the Judicial Officer that an amendment of the pleadings would prejudice him on the merits, the Judicial Officer may allow the pleadings to be amended and may grant a continuance to enable the objecting party to rebut the evidence presented.

(d) The Judicial Officer may, upon reasonable notice and upon such terms as are just, permit service of a supplemental pleading setting forth transactions, occurrences, or events which have transpired since the date of the pleading sought to be supplemented and which are relevant to any of the issues involved.

§ 957.12 Continuances and extensions.

Continuances and extensions will not be granted by the Judicial Officer except for good cause shown.

§ 957.13 Hearings.

(a) Hearings are held at the headquarters of the Postal Service, Washington, DC 20260, or other locations designated by the Judicial Officer.

(b) A party may, not later than 7 days prior to the scheduled date of a hearing, file a request that such hearing be held at a place other than that designated in the Judicial Officer's order relative to hearing. He shall support his request with a statement outlining:

(1) The evidence to be offered in such place;

(2) The names and addresses of the witnesses who will testify;

(3) The reasons why such evidence cannot be produced at Washington, D.C. The Judicial Officer shall give consideration to the convenience and necessity of the parties and the relevancy of the evidence to be offered.

§ 957.14 Appearances.

(a) A Respondent may appear and be heard in person or by attorney.

(b) An attorney may practice before the Postal Service in accordance with applicable rules issued by the Judicial Officer (see Part 951 of this chapter).

(c) When a Respondent is represented by an attorney, all pleadings and other papers subsequent to the notice of proposed debarment shall be mailed to the attorney.

(d) All counsel shall promptly file notices of appearance. Changes of Respondent's counsel shall be recorded by notices from retiring and succeeding counsel and from the Respondent.

(e) After a request for a hearing has been filed pursuant to the rules in this part, the Law Department shall represent the Department Head in further proceedings relative to the hearing and shall in its notice of appearance identify the individual member of such office who has been assigned to handle the case on its behalf.

§ 957.15 Conduct of the hearing.

The Judicial Officer shall have authority to:

(a) Administer oaths and affirmations;

(b) Examine witnesses;

(c) Rule upon offers of proof, admissibility of evidence, and matters of procedure;

(d) Order any pleading amended upon motion of a party at any time prior to the close of the hearing;

(e) Maintain discipline and decorum and exclude from the hearing any person acting in an indecorous manner;

(f) Require the filing of briefs or memoranda of law on any matter upon which he is required to rule;

(g) Order prehearing conferences for the purpose of the settlement or simplification of issues by the parties;

(h) Order the proceeding reopened at any time prior to his decision for the receipt of additional evidence;

(i) Render a final agency decision;

(j) Take such other further action as may be necessary to properly preside over the debarment proceeding and render decision therein.

§ 957.16 Evidence.

(a) Except as otherwise provided in the rules in this part, the rules of evidence governing civil proceedings in matters not involving trial by jury in the courts of the United States shall govern. However, such rules may be relaxed to the extent that the Judicial Officer deems proper to insure a fair hearing.

(b) Testimony shall be under oath or affirmation and witnesses shall be subject to cross-examination.

(c) Agreed statements of fact may be received in evidence.

(d) Official notice or knowledge may be taken of the types of matters of which judicial notice or knowledge may be taken.

(e) The written statement of a competent witness may be received in evidence: *Provided*, That such statement is relevant to the issues, that the witness shall testify under oath at the hearing that the statement is in all respects true, and, in the case of expert witnesses, that the statement correctly states his opinion or knowledge concerning the matters in question.

§ 957.17 Witness fees.

The Postal Service does not pay fees and expenses for Respondent's witnesses or for depositions requested by Respondent.

§ 957.18 Depositions.

(a) Not later than 7 days prior to the scheduled date of the hearing any party may file application with the Docket Clerk for the taking of testimony by deposition. In support of such application the applicant shall submit under oath or affirmation a statement setting out the reasons why such testimony should be taken by deposition, the time and the place, and the name and address of the witness whose deposition is desired, the subject matter of the testimony of each witness, its relevancy, and the name and address of the person before whom the deposition is to be taken.

(b) If the application be granted, the order for the taking of the deposition will specify the time and place thereof, the name of the witness, the person before whom the deposition is to be taken and any other necessary information.

(c) Each witness testifying upon deposition shall be duly sworn, and the adverse party shall have the right to cross-examine. The questions and answers together with all objections, shall be reduced to writing and, unless waived by stipulation of the parties, shall be read to and subscribed by the witness in the presence of the deposition officer who shall certify it in the usual form. The deposition officer shall file the testimony taken by deposition as directed in the order. The deposition officer shall put the witness on oath. All objections made at the time of examination shall be noted by the deposition officer and the evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, a party may transmit written interrogatories to the officer, who shall propound them to the witness and record the answers verbatim. Objections to relevancy or materiality of testimony, or to errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of the parties and errors of any kind which might be obviated, cured or removed if promptly presented, are waived unless timely objection is made at the taking of the deposition.

(d) At the hearing any part or all of the deposition may be offered in evidence by any party who was present or represented at the taking of the deposition or who had notice thereof. If the deposition is not offered and received in evidence, it shall not be considered as a part of the record in the proceeding. The admissibility of depositions or parts thereof shall be governed by the rules of evidence.

(e) The party requesting the deposition shall pay all fees required to be paid to witnesses and the deposition officer, and shall provide an original and one copy of the deposition for the official record, and shall serve one copy upon the opposing party.

(f) Within the United States or within a territory or insular possession, subject to the dominion of the United States, depositions may be taken before an officer authorized to administer oaths by the laws of the United States or of the place where the examination is held; within a foreign country, depositions may be taken before a secretary of an embassy or legation, consul general, vice consul or consular agent of the United States, or any other person designated in the order for the taking of a deposition.

(g) Depositions may also be taken and submitted on written interrogatories in substantially the same manner as depositions taken by oral examination. When a deposition is taken upon written interrogatories and cross-interrogatories, none of the parties shall be present or represented, and no person, other than the witness, a stenographic reporter, and the officer shall be present at the examination of the witness, which fact shall be certified by the officer, who shall propound the interrogatories and cross-interrogatories to the witness in their order and reduce the testimony to writing in the witness' own words.

§ 957.19 Transcript.

(a) Hearings shall be stenographically reported by a contract reporter of the Postal Service under the supervision of the Judicial Officer. Argument upon any matter may be excluded from the transcript by order of the Judicial Officer. A copy of the transcript shall be a part of the record and the sole official transcript of the proceeding. Copies of the transcript may be obtained by the Respondent from the reporter upon the payment to him of a reasonable price therefor. Copies of parts of the official record other than the transcript may be obtained from the librarian of the Postal Service or the Docket Clerk.

(b) Changes in the official transcript may be made only when they involve errors affecting substance and then only in the manner herein provided. No physical changes shall be made in or upon the official transcript, or copies thereof, which have been filed with the record. Within 10 days after the receipt by any party of a copy of the official transcript, or any part thereof, he may file a motion requesting correction of the transcript. Opposing counsel shall, within such time as may be specified by the Judicial Officer, notify the Judicial Officer in writing of his concurrence or disagreement with the requested corrections. Failure to interpose timely objection to a proposed correction shall be considered to be concurrence. Thereafter, the Judicial Officer shall by order specify the corrections to be made in the transcript. The Judicial Officer on his own initiative may order corrections to be made in the transcript with prompt notice to the parties of the proceeding. Any changes ordered by the Judicial Officer other than the agreement of the parties shall be subject to objection and exception.

§ 957.20 Proposed findings and conc sions.

(a) Each party to a proceedin except one who fails to appear at th hearing may, unless at the discretio of the Judicial Officer such is not a propriate, submit proposed findings fact, conclusions of law and supporti reasons either in oral or written for in the discretion of the Judicial Officer. The Judicial Officer may also require parties to any proceeding to submit proposed findings of fact and conclusions of law with supporting reasons. Unless given orally the date set for filing of proposed findings of fact and conclusions of law shall be within 15 days after the delivery of the official transcript to the Docket Clerk who shall notify both parties of the date of its receipt. The filing date for proposed findings shall be the same for both parties. If not submitted by such date, or unless extension of time for the filing thereof is granted, they will not be included in the record or given consideration.

(b) Except when presented orally before the close of the hearing, proposed findings of fact shall be set forth in serially numbered paragraphs and shall state with particularity all evidentiary facts in the record with appropriate citations to the transcript or exhibits supporting the proposed findings. Each proposed conclusion shall be separately stated.

§ 957.21 Decision.

The Judicial Officer shall issue a final agency decision. Such decision shall include findings and conclusions, with the reasons therefor, upon all the material issues of fact or law presented on the record, and the appropriate order.

§ 957.22 Motion for reconsideration.

Within 10 days from the date thereof, or such longer period as may be fixed by the Judicial Officer, either party may file a motion for reconsideration of the final agency decision. Each motion for reconsideration shall be accompanied by a brief clearly setting forth the points of fact and of law relied upon in support of said motion.

§ 957.23 Modification or revocation of orders.

A party against whom an order of debarment has been issued may file an application for modification or revocation thereof. The Docket Clerk shall transmit a copy of the application to the General Counsel, who shall file a written reply. A copy of the reply shall be sent to the applicant by the Docket Clerk. Thereafter an order granting or denying such application will be issued by the Judicial Officer.

§ 957.24 Computation of time.

A designated period of time under the rules in this part excludes the day the period begins, and includes the last day of the period unless the last day is a Saturday, Sunday, or legal holiday, in which event the period runs until the close of business on the next business day.

§ 957.25 Official record.

The transcript of testimony together with all pleadings, orders, exhibits, briefs, and other documents filed in the proceeding shall constitute the official record of the proceeding.

§ 957.26 Public information.

The Law Librarian of the Postal Service shall maintain for public inspection in the Law Library copies of all final decisions. The Docket Clerk maintains the complete official record of every proceeding.

§ 957.27 Suspension.

(a) Any firm or individual suspended under section 1, part 6 of the Postal Contracting Manual who believes that his suspension has not been in accordance with the provisions thereof, or with applicable laws or regulations, may appeal to the Judicial Officer for a review of the suspension.

(b) Any such appeal shall be addressed to the Judicial Officer through the Department Head who ordered the suspension within 20 days of the date upon which the respondent has been notified of his suspension. Such appeal shall concisely and in the manner of a pleading set forth the grounds upon which the suspension is contested and may be supported by a brief and such evidence as the respondent may desire to submit.

(c) Should the respondent desire oral argument or a hearing before the Judicial Officer in connection with his appeal, application therefor shall be included in the appeal. In the event that the Judicial Officer grants the respondent's application for a hearing the notice of suspension and the appeal shall constitute the pleadings defining the issues therein and the hearing shall be regulated in accordance with the rules in this part concerning debarment proceedings.

(d) The decision of the Judicial Officer in any appeal shall constitute the final agency determination of the issues presented thereby. Either party thereto may, however, file a motion for reconsideration thereof, in accordance with the provisions of § 957.22.

[36 FR 11574, June 16, 1971, as amended at 41 FR 19309, May 12, 1976]

§ 957.28 Ex parte communications.

The provisions of 5 U.S.C. 551(14), 556(d) and 557(d) prohibiting ex parte communications are made applicable to proceedings under these rules of practice.

[42 FR 5358, Jan. 28, 1977]

PART 958—RULES OF PRACTICE IN PROCEEDINGS RELATIVE TO THE REFUSAL TO PROVIDE POST OFFICE BOX OR CALLER SERVICE AND THE TERMINATION OF POST OFFICE BOX OR CALLER SERVICE

Sec.

958.1 Authority for rules.
958.2 Scope of rules.
958.3 Petition; notice of hearing; answer; summary judgment.
958.4 Hearings.
958.5 Election as to hearing.
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958.7 Presiding officers.
958.8 Proposed findings of fact and conclusions of law.
958.9 Initial decision.
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958.12 Compromise and informal disposition.
958.13 Petition to revoke, amend, or modify.
958.14 Ex parte communications.

Authority: 39 U.S.C. 204, 401.

Source: 36 FR 11578, June 16, 1971, unless otherwise noted.

Editorial Note: For nomenclature changes to this part, see 37 FR 23422, Nov. 3, 1972.

§ 958.1 Authority for rules.

The Judicial Officer promulgates the rules in this part pursuant to authority delegated by the Postmaster General.

§ 958.2 Scope of rules.

The rules in this part shall be applicable to cases in which a postmaster has issued a Determination denying an application for post office box or caller service, or terminating the box or caller service being provided to a customer, and in which a Petition in opposition to that Determination has been filed.

[46 FR 62847, Dec. 29, 1981]

§ 958.3 Petition; notice of hearing; answer; summary judgment.

(a) *Petition.* Any applicant or customer who receives a postmaster's Determination may oppose it by filing, in triplicate, a written Petition stating his reasons for opposing the Determination. The Petition, signed by the Petitioner or his attorney, shall be filed by sending the Petition via certified mail to the postmaster who issued the Determination, or by otherwise delivering it to the postmaster's office. The Petition must be filed within twenty days (Sundays and holidays included) after the date on which the Petitioner received the Determination. The postmaster shall immediately forward two copies of the Petition to the Recorder, Judicial Officer Department, U.S. Postal Service, Washington, DC 20260-6100.

(b) *Notice of hearing.* On receipt of the Petition, the Recorder shall schedule a hearing on a date not later than 30 days after the date of receipt. A Notice of Hearing shall be sent to the Petitioner. A copy of the Notice of Hearing and the Petition shall be sent to the General Counsel of the U.S. Postal Service.

(c) *Answer.* The General Counsel of the Postal Service shall file an Answer to the Petition within fifteen days after the date the General Counsel received a copy of the Petition from the Recorder.

(d) *Summary judgment.* Upon motion of either the General Counsel or the Petitioner, or on his or her own initiative, the presiding officer may find that the Petition and Answer present no genuine or material issues of fact requiring an evidentiary hearing and may thereupon render an initial decision granting or dismissing the Petition. The initial decision shall become the final asgency decision if a timely appeal is not taken.

[46 FR 62847, Dec. 29, 1981]

§ 958.4 Hearings.

Hearings are held at the Headquarters Office of the U.S. Postal Service, Washington, D.C., or such other location as may be designated by the presiding officer. Not later than 5 days prior to the date fixed for the hearing, a party may file a request that a hearing be held to receive evidence in his behalf at a place other than that designated for hearing in the notice. He shall support his request with a statement outlining: (a) The evidence to be offered in such place; (b) the names and addresses of the witnesses who will testify; (c) the reasons why such evidence cannot be produced at Washington, D.C. The presiding officer shall give consideration to the convenience and necessity of the parties and the relevancy of the evidence to be offered.

[36 FR 11578, June 16, 1971, as amended at 38 FR 17217, June 29, 1973]

§ 958.5 Election as to hearing.

If both parties so elect, they may waive an oral hearing and submit the matter for decision on the basis of the appeal and answer, with the approval of the presiding officer and subject to the right of the presiding officer to require the parties to furnish such further evidence or such briefs as the presiding officer may deem necessary. The request to waive oral hearing shall be mailed to the presiding officer not later than 10 days prior to the date set for the hearing.

§ 958.6 Default.

If a person who has not waived oral hearing fails, without notice or without adequate cause, satisfactory to the presiding officer, to appear at the hearing, the presiding officer shall issue an order dismissing the appeal. If no protest to such order of dismissal is received within 10 days from the date of issuance of the order, such order shall become final. Any protest to the order of dismissal received within 10 days from the date of its issuance shall be given such consideration as the presiding officer deems to be warranted by the facts and circumstances alleged in the protest. An order of dismissal issued under this section by an Administrative Law Judge may be appealed to the Judicial Officer within 10 days from the date of the order.

[36 FR 11578, June 16, 1971, as amended by 42 FR 30504, June 15, 1977]

§ 958.7 Presiding officers.

The presiding officer at any hearing shall be an Administrative Law Judge qualified in accordance with law, or the Judicial Officer (39 U.S.C. 204). The Chief Administrative Law Judge shall assign cases to Administrative Law Judges by rotation so far as practicable. The Judicial Officer may, for good cause shown, preside at the reception of evidence in proceedings where expedited hearings are requested by either party. When the Judicial Officer presides at the hearing, he shall, in his sole discretion, render a tentative or final decision after the conclusion of the hearing. Exceptions may be filed to a tentative decision in accordance with § 958.10.

[36 FR 11578, June 16, 1971, as amended at 38 FR 20263, July 30, 1973; 42 FR 30504, June 15, 1977]

§ 958.8 Proposed findings of fact and conclusions of law.

Unless otherwise ordered by the presiding officer, proposed findings of fact and conclusions of law and supporting arguments shall be submitted orally or in writing at the conclusion of the hearing.

§ 958.9 Initial decision.

Unless given orally at the conclusion of the hearing, the Administrative Law Judge shall render an initial decision as expeditiously as practicable following the conclusion of the hearing, and the receipt of the proposed findings, if any. The initial decision shall become the final agency decision if a timely appeal is not taken.

§ 958.10 Appeal.

Either party may file exceptions in a brief on appeal to the Judicial Officer within 5 days after receipt of the initial or tentative decision unless additional time is granted. A reply brief may be filed within 5 days after the receipt of the appeal brief by the opposing party.

§ 958.11 Final agency decision.

The Judicial Officer shall render a final agency decision or he shall refer the matter to the Postmaster General or the Deputy Postmaster General for such final decision. The decision shall be served upon the parties and upon the postmaster at the office where the box is located.

§ 958.12 Compromise and informal disposition.

Nothing in these rules precludes the compromise, settlement, and informal disposition of proceedings initiated under these rules at any time prior to the issuance of the final agency decision.

§ 958.13 Petition to revoke, amend, or modify.

A party against whom an order has been issued may file a petition for the revocation, amendment or modification thereof. The Docket Clerk shall transmit a copy of the petition to the General Counsel, who may file a written reply. A copy of the reply shall be sent to the petitioner by the Docket Clerk. Thereafter an order granting or denying such application will be issued by the Judicial Officer.

§ 958.14 Ex parte communications.

The provisions of 5 U.S.C. 551(14), 556(d) and 557(d) prohibiting ex parte communications are made applicable to proceedings under these rules of practice.

[42 FR 5358, Jan. 28, 1977]

PART 959—RULES OF PRACTICE IN PROCEEDINGS RELATIVE TO THE PRIVATE EXPRESS STATUTES

Sec.

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959.4 Demands for payment of postage.
959.5 Appeals from demands.
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959.30 Public information.
959.31 Ex parte communications.

AUTHORITY: 39 U.S.C. 204, 401; 39 CFR 224.1(c)(6)(ii)(D).

SOURCE: 39 FR 33213, Sept. 16, 1974 unless otherwise noted.

§ 959.1 Authority for rules.

These rules are issued by the Judicial Officer of the U.S. Postal Service pursuant to authority delegated by the Postmaster General.

§ 959.2 Scope of rules.

These rules apply to all Postal Service proceedings in which Part 310 of this title authorizes appeals to the Judicial Officer from demands for postage for matter carried in violation of the Private Express Statutes, and in proceedings to revoke, as to any person, the suspension of provisions of the Private Express Statutes in accordance with Part 320 of this title.

§ 959.3 Office, business hours.

The offices of the officials mentioned in these rules are located at the U.S. Postal Service, 475 L'Enfant Plaza West SW., Washington, DC 20260, and are open, Monday through Friday except holidays, during the normal business hours of the Postal Service.

§ 959.4 Demands for payment of postage.

Final demands for payment of postage will be accompanied by a copy of these rules and will:

(a) State that the demand is final unless appealed under these rules within 15 days after receipt of the demand;

(b) Describe the transaction on which the demand is based and the provisions of law or regulation alleged to have been violated; and

(c) State the manner in which the amount of the demand is computed.

§ 959.5 Appeals from demands.

(a) A party upon whom a demand for postage has been made may appeal from the demand by filing a petition, in triplicate, with the Docket Clerk, Judicial Officer Department, within 15 days after receipt of the demand.

(b) The petition shall:

(1) Be signed personally by an individual petitioner, by one of the partners of a partnership, or by an officer of a corporation or association;

(2) State the reasons why the person filing the petition (designated the "Petitioner" in these rules) believes the demand is not justified;

(3) Admit or deny each fact alleged in the demand and allege any facts upon which the Petitioner relies to show compliance with applicable laws and regulations; and,

(4) Be accompanied by a copy of the demand.

(c) Factual allegations that are not denied by the petition may be deemed to have been admitted. The demand and the petition (together with other documents authorized in this part) shall become the pleadings in appeals from demands.

§ 959.6 Revocations of suspension.

(a) The General Counsel, or a member of his staff as he may designate, may initiate a revocation of the suspension of the Private Express Statutes as provided in Part 320 of this title as to any person, by filing, in triplicate, a petition with the Docket Clerk which

(1) Names the person involved;

(2) States the legal authority under which the proceeding is initiated;

(3) States the facts in a manner sufficient to enable the person named to make answer thereto; and,

(4) Recommends the issuance of an appropriate order.

(b) *Answer.* (1) The person named in the petition (designated the "Respondent" in these rules) shall file an answer with the Docket Clerk within 15 days after he is served with a copy of the petition in accordance with § 959.8.

(2) The answer shall contain a concise statement admitting, denying, or explaining each of the allegations set forth in the petition.

(3) Any facts alleged in the petition which are not denied, or which are expressly admitted in the answer, may be considered as proved, and no further evidence regarding these facts need be adduced at the hearing.

(4) The answer shall be signed personally by an individual respondent, or in the case of a partnership, by one of the partners, or, in the case of a corporation or association, by an officer thereof.

(5) The answer shall set forth the respondent's address and the name and address of his attorney, if respondent is represented by counsel.

(6) The answer shall affirmatively state whether the respondent will appear in person or by counsel at the hearing.

(7) If the respondent does not desire to appear at the hearing in person or by counsel, the matter shall be deemed submitted for determination pursuant to paragraph (b) of § 959.10.

§ 959.7 Notice of hearing.

When a petition is filed, the Docket Clerk shall issue a notice of hearing, stating the time and place of the hearing and the date for filing an answer which shall not exceed 15 days from the date of service of the petition, and a reference to the effect of failure to file an answer or appear at the hearing. (See §§ 959.5(c), 959.6(b), and 959.10.) Whenever practicable, the hearing date shall be within 30 days of the date of the notice.

§ 959.8 Service of petition filed under § 959.6.

(a) The Docket Clerk shall cause a notice of hearing and a copy of the petition to be transmitted to the postmaster at any office of address of the respondent in which the respondent is doing business, which shall be delivered to the respondent or his agent by said postmaster or his designee. A receipt acknowledging delivery of the notice shall be secured from the respondent or his agent and forwarded to the Docket Clerk, to become a part of the official record.

(b) If, after 5 days, the postmaster or his designee, can find no person to accept service of the notice of hearing and petition pursuant to paragraph (a) of this section, the notice and copy of the petition may be delivered in the usual manner as other mail addressed to the respondent. A statement, showing the time and place of delivery, signed by the postal employee who delivered the notice of hearing and petition shall be forwarded to the Docket Clerk and such statement shall constitute evidence of service.

§ 959.9 Filing documents for the record.

(a) Each party shall file with the Docket Clerk pleadings, motions, orders and other documents for the record. The Docket Clerk shall cause copies to be delivered promptly to other party(ies) to the proceeding and to the presiding officer.

(b) The parties shall submit three copies of all documents unless otherwise ordered by the presiding officer. One copy shall be signed as the original.

(c) Documents shall be dated and state the title of the proceeding and, except initial petitions, the docket number. Any pleading or other document required by order of the presiding officer to be filed by a specified date, shall be delivered to the Docket Clerk on or before such date. The date of filing shall be entered thereon by the Docket Clerk.

§ 959.10 Default.

(a) If the respondent fails to file an answer within the time specified in the notice of hearing, he shall be deemed in default and to have waived hearing and further procedural steps. The Judicial Officer shall thereafter issue an order without further notice to the respondent.

(b) If the respondent files an answer but fails to appear at the hearing, the presiding officer shall receive petitioner's evidence and render an initial decision.

§ 959.11 Amendment of pleadings.

(a) Amendments proposed prior to the hearing shall be filed with the Docket Clerk. Amendments proposed thereafter shall be filed with the presiding officer.

(b) By consent of the parties, a pleading may be amended at any time. Also, a party may move to amend a pleading at any time prior to the close of the hearing and, provided that the amendment is reasonably within the scope of the proceeding initiated by the petition, the presiding officer shall make such ruling on the motion as he deems fair and equitable to the parties.

(c) When issues not raised by the pleadings, but reasonably within the scope of the proceedings initiated by the petition, are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendments as may be necessary to make the pleadings conform to the evidence, and to raise such issues, shall be allowed at any time upon the motion of any party.

(d) If a party objects to the introduction of evidence at the hearing on the ground that it is not within the issues made by the pleadings, but fails to satisfy the presiding officer that an amendment of the pleadings would prejudice him on the merits, the presiding officer may allow the amendment and may grant a continuance to enable the objecting party to rebut the evidence presented.

(e) The presiding officer may, upon reasonable notice and upon such terms as are just, permit service of supplemental pleadings setting forth transactions, occurrences, or events which have happened since the date of the pleading sought to be supplemented and which are relevant to any of the issues involved.

§ 959.12 Continuances and extensions.

Continuances and extensions will not be granted by the presiding officer except for good cause found.

§ 959.13 Hearings.

Hearings are held at the headquarters of the Postal Service, Washington, DC 20260, or other locations designated by the presiding officer.

§ 959.14 Change of place of hearings.

Not later than the date fixed for the filing of the answer, a party may file a written request that a hearing be held at a place other than that designated in the notice. He shall support his request with a statement outlining:

(a) The evidence to be offered in such place;

(b) The names and addresses of the witnesses who will testify; and,

(c) The reasons why such evidence cannot be produced at Washington, D.C. The presiding officer shall give consideration to the convenience and necessity of the parties and the relevancy of the evidence to be offered.

§ 959.15 Appearances.

(a) A respondent may appear and be heard in person or by attorney.

(b) An attorney may practice before the Postal Service in accordance with the rules in Part 951 of this title.

(c) When a respondent is represented by an attorney, all pleadings and other papers subsequent to the initial petition shall be mailed to the attorney.

(d) A respondent must promptly file a notice of change of attorney.

§ 959.16 Presiding officers.

(a) The presiding officer shall be either an Administrative Law Judge qualified in accordance with law, or the Judicial Officer. The Chief Administrative Law Judge shall assign cases to Administrative Law Judges upon rotation so far as practicable. The Judicial Officer may, for good cause found, preside at the reception of evidence in proceedings upon request of either party.

(b) The presiding officer shall have authority to:

(1) Administer oaths and affirmations;

(2) Examine witnesses;

(3) Rule upon offers of proof, admissibility of evidence and matters of procedure;

(4) Order any pleading amended upon motion of a party at any time prior to the close of the hearing;

(5) Maintain discipline and decorum and exclude from the hearing any person acting in an indecorous manner;

(6) Require the filing of briefs or memoranda of law on any matter upon which he is required to rule;

(7) Order prehearing conferences for the purpose of settlement or simplification of issues by the parties;

(8) Order the proceeding reopened at any time prior to his decision for the receipt of additional evidence; and,

(9) Render an initial decision if the presiding officer is an Administrative Law Judge, which becomes the final decision of the Postal Service unless a timely appeal is taken; the Judicial Officer may issue a tentative or a final decision.

§ 959.17 Evidence.

(a) Except as otherwise provided in these rules, the rules of evidence governing civil proceedings in matters not involving trial by jury in the District courts of the United States shall govern. However, such rules may be relaxed to the extent that the presiding officer deems proper to insure a fair hearing. The presiding officer shall exclude irrelevant, immaterial or repetitious evidence.

(b) Testimony shall be under oath or affirmation and witnesses shall be subject to cross-examination.

(c) Agreed statements of fact may be received into evidence.

(d) Official notice or knowledge may be taken of the types of matters of which judicial notice or knowledge may be taken.

(e) The written statement of a competent witness may be received into evidence provided that such statement is relevant to the issues, that the witness shall testify under oath at the hearing that the statement is in all respects true, and, in the case of expert witnesses, that the statement correctly states his opinion or knowledge concerning the matters in question.

(f) A party who objects to the admission of evidence shall make a brief statement of the grounds for the objection. Formal exceptions to the rulings of the presiding officer are unnecessary.

§ 959.18 Subpoenas.

The Postal Service is not authorized by law to issue subpoenas requiring the attendance or testimony of witnesses or the production of documents.

§ 959.19 Witness fees.

The Postal Service does not pay fees and expenses for a respondent's witnesses or for depositions requested by a respondent.

§ 959.20 Depositions.

(a) Not later than 5 days after the filing of respondent's answer, any party may file an application with the Docket Clerk for the taking of testimony by deposition. In support of such application, the applicant shall submit under oath or affirmation, a statement containing the reasons why such testimony should be taken by deposition, the time and place, and the name and address of the witness whose deposition is desired, the subject matter of the testimony of each witness, its relevancy, and the name and address of the person before whom the deposition is to be taken.

(b) If the application be granted, the order shall specify the time and place thereof, the name of the witness, the person before whom the deposition is to be taken, and any other necessary information.

(c) Each deponent shall first be duly sworn, and the adverse party shall have the right to cross-examine. The questions and answers, together with all objections, shall be reduced to writing and, unless waived by stipulation of the parties, shall be read to and subscribed by the witness in the presence of the deposition officer who shall certify it in the usual form. The deposition officer shall file the testimony taken by deposition as directed in the order. All objections made at the time of examination shall be noted by the deposition officer and the evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, a party may transmit written interrogatories to the deposition officer, who shall propound them to the witness and record the answers verbatim. Objections to relevancy or materiality of testimony, or to errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form or relevancy or materiality of the questions or answers, in the oath or affirmation, or in the conduct of the parties, and errors of any kind which might be obviated, cured or removed if promptly presented, are waived unless timely objection is made at the taking of the deposition.

(d) At the hearing, any part or all of the deposition may be offered into evidence by any party who was present or represented at the taking of the deposition or who had notice thereof. If the deposition is not offered and received into evidence, it shall not be considered as a part of the record. The admissibility of depositions or parts thereof shall be governed by the rules of evidence.

(e) The party requesting the deposition shall pay all fees required to be paid to witnesses and the deposition officer, and shall provide an original and one copy thereof for the official record, and shall serve one copy upon the opposing party.

(f) Within the United States, or within a territory or possession subject to the dominion of the United States, depositions may be taken before an officer authorized to administer oaths by the laws of the United States or of the place where the examination is held; within a foreign country, depositions may be taken before a secretary of an embassy or legation, consul general, vice consul or consular agent of the United States, or any other person designated in the order for the taking of the deposition.

(g) Depositions may also be taken and submitted on written interrogatories in substantially the same manner as depositions taken by oral examination. When a deposition is taken upon written interrogatories and cross-interrogatories, none of the parties shall be present or represented, and no person, other than the witness, a stenographic reporter, and the deposition officer, shall be present at the examination of the witness, which fact shall be certified by the deposition officer, who shall propound the interrogatories and cross-interrogatories to the witness in their order and cause the testimony to be reduced to writing in the witness' own words.

§ 959.21 Transcript.

(a) Hearings shall be stenographically reported by a contract reporter of the Postal Service under the supervision of the assigned presiding officer. Argument upon any matter may be excluded from the transcript by order of the presiding officer. A copy of the transcript shall be a part of the record and the sole official transcript of the proceeding. Copies of the transcript shall be supplied to the parties by the reporter at rates not to exceed the maximum rates fixed by the contract between the Postal Service and the reporter. Copies of parts of the official record, other than the transcript, may be obtained by the respondent from the reporter upon the payment to him of a reasonable price therefor.

(b) Changes in the official transcript may be made only when they involve errors affecting substance, and then only in the manner herein provided. No physical changes shall be made in or upon the official transcript, or copies thereof, which have been filed with the record. Within 10 days after the receipt by any party of a copy of the official transcript, or any part thereof, a party may file a motion requesting correction of the transcript. The opposing party shall, within such time as may be specified by the presiding officer, notify the presiding officer in writing of his concurrence or disagreement with the requested corrections. Failure to interpose timely objection to a proposed correction shall be considered to be concurrence. Thereafter, the presiding officer shall by order specify the corrections to be made in the transcript. The presiding officer on his own initiative may order corrections to be made in the transcript with prompt notice to the parties of the proceeding. Any changes ordered by the presiding officer other than by agreement of the parties shall be subject to objection and exception.

§ 959.22 Proposed findings and conclusions.

(a) Each party, except one who fails to answer the complaint or, having answered, either fails to appear at the hearing or indicates in the answer that he does not desire to appear, may submit proposed findings of fact, conclusions of law and supporting reasons either in oral or written form. The presiding officer may also require the parties to submit proposed findings of fact and conclusions of law with supporting reasons.

(b) Proposed findings of fact, conclusions of law and supporting reasons not presented orally before the close of the hearing, shall, unless otherwise directed by the presiding officer, be filed within 15 days after the delivery of the official transcript to the Docket Clerk, who shall notify the parties of the date of its receipt. The proposed findings of fact, conclusions of law and supporting reasons shall be set forth in serially numbered paragraphs, and shall state with particularity, all pertinent evidentiary facts in the record with appropriate citations to the transcript or exhibits supporting the proposed findings. Each proposed conclusion of law shall be separately stated.

§ 959.23 Decisions.

(a) *Oral decisions.* The presiding officer may, in his discretion, render an oral decision (an initial decision by an Administrative Law Judge, or a tentative or final decision by the Judicial Officer) at the close of the hearing. A party who desires an oral decision shall notify the presiding officer and the opposing party at least 5 days prior to the date set for the hearing. Either party may submit proposed findings of fact and conclusions of law either orally or in writing at the conclusion of the hearing.

(b) *Written initial decision by Administrative Law Judge.* A written initial decision shall be rendered with all due speed. The initial decision shall include findings of fact and conclusions of law, with the reasons therefor, upon all the material issues of fact or law presented on the record, and an appropriate order. The initial decision shall become the final decision of the Postal Service unless an appeal is taken in accordance with § 959.24.

(c) *Written tentative or final decision by the Judicial Officer.* When the Judicial Officer presides at the hearing, he shall issue a final or a tentative decision. Such decision shall include findings of fact and conclusions of law, with the reasons therefor, upon all the material issues of fact or law presented on the record, and appropriate order. The tentative decision shall become the final decision of the Postal Service unless exceptions are filed in accordance with § 959.24.

§ 959.24 Exceptions to initial decision or tentative decision.

(a) A part in a proceeding presided over by an Administrative Law Judge, except a party who failed to file an answer, may appeal to the Judicial Officer by filing exceptions in a brief on appeal within 15 days from the receipt of the Administrative Law Judge's written initial decision.

(b) A party in a proceeding presided over by the Judicial Officer, except one who has failed to file an answer, may file exceptions within 15 days from the receipt of the Judicial Officer's written tentative decision.

(c) When an initial or tentative decision is rendered orally at the close of the hearing, the presiding officer may then establish and orally give notice to the parties participating in the hearing of the time limit within which exceptions must be filed.

(d) Upon receipt of the brief on appeal from an initial decision of an Administrative Law Judge, the Docket Clerk shall promptly transmit the record to the Judicial Officer. The date for filing the reply to a brief on appeal or to a brief in support of exceptions to a tentative decision by the Judicial Officer is 10 days after the receipt thereof. No additional briefs shall be received unless requested by the Judicial Officer.

(e) Briefs on appeal or in support of exceptions and replies thereto shall be filed in triplicate with the Docket Clerk, and contain the following matter in the order indicated:

(1) A subject index of the matters presented, with page references; a table of cases alphabetically arranged; a list of statutes and texts cited, with page references.

(2) A concise abstract or statement of the case.

(3) Numbered exceptions to specific findings of fact or conclusions of law of the presiding officer.

(4) A concise argument clearly setting forth points of fact and of law relied upon in support of, or in opposition to, each exception taken, together with specific references to the pertinent parts of the record and the legal or other authorities relied upon.

(f) Unless permission is granted by the Judicial Officer, no brief on appeal or in support of exceptions shall exceed 50 printed or 100 typewritten pages double spaced.

(g) The Judicial Officer will extend the time to file briefs only upon written motion for good cause found. The Docket Clerk shall promptly notify the movant of the Judicial Officer's decision on the motion. If a brief is not filed within the time prescribed, the defaulting party will be deemed to have abandoned the appeal or waived the exceptions, and the initial or tentative decision shall become the final decision of the Postal Service.

§ 959.25 Judicial Officer.

The Judicial Officer is authorized (a) to act as presiding officer at hearings, (b) to render tentative decisions (c) to render final decisions of the Postal Service, (d) to refer the record in any proceedings to the Postmaster General or the Deputy Postmaster General who will make the final decision of the Postal Service, and (e) to revise or amend these rules of practice. The entire official record will be considered before a final decision of the Postal Service is rendered. Before rendering a final decision of the Postal Service, the Judicial Officer may order the hearing reopened for the presentation of additional evidence by the parties.

§ 959.26 Motion for reconsideration.

A party may file a motion for reconsideration of a final decision of the Postal Service within 10 days after receiving it, or within such longer period as the Judicial Officer may fix. Each motion for reconsideration shall be accompanied by a brief clearly setting forth the points of fact and of law relied upon in support of said motion.

§ 959.27 Modification or revocation of orders.

A party against whom an order has been issued may file with the Docket Clerk an application for modification or revocation, addressed to the Judicial Officer. The Docket Clerk shall transmit a copy of the application to the General Counsel, who shall file a written reply within 10 days after filing, or such other period as the Judicial Officer may fix. A copy of the reply shall be sent to the applicant by the Docket Clerk. Thereafter an order granting or denying such application in whole or in part will be issued by the Judicial Officer.

§ 959.28 Computation of time.

A designated period of time excludes the day the period begins, and includes the last day of the period unless the last day is a Saturday, Sunday, or legal holiday, in which event the period runs until the close of business on the next business day.

§ 959.29 Official record.

The transcript of testimony together with all pleadings, orders, exhibits, briefs and other documents filed in the proceedings shall constitute the official record of the proceeding.

§ 959.30 Public information.

The Law Librarian of the Postal Service maintains for public inspection in the Law Library copies of all initial, tentative and final decisions of the Postal Service. The Docket Clerk maintains the complete official record of every proceeding.

§ 959.31 Ex parte communications.

The provisions of 5 U.S.C. 551(14), 556(d) and 557(d) prohibiting ex parte communications are made applicable to proceedings under these rules of practice.

[42 FR 5358, Jan. 28, 1977]

PART 960—RULES RELATIVE TO IMPLEMENTATION OF THE EQUAL ACCESS TO JUSTICE ACT IN POSTAL SERVICE PROCEEDINGS

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AUTHORITY: 5 U.S.C. 504 (c)(1); 39 U.S.C. 204, 401 (2).

SOURCE: 46 FR 45945, Sept. 16, 1981, unless otherwise noted.

Subpart A—General Provisions

§ 960.1 Purpose of these rules.

The Equal Access to Justice Act, 5 U.S.C. 504 (called "the Act" in this part), provides for the award of attorney fees and other expenses to eligible individuals and entities who are parties to certain administrative proceedings (called "adversary adjudications") before the Postal Service. An eligible party may receive an award when it prevails over the Postal Service, unless the Postal Service's position was substantially justified or special circumstances make an award unjust. The rules in this part describe the parties eligible for awards and the proceedings that are covered. They also explain how to apply for awards, and the procedures and standards that the Postal Service will use to make them.

[46 FR 45945, Sept. 16, 1981, as amended at 52 FR 6797, Mar. 5, 1987]

§ 960.2 When the Act applies.

The Act applies to any adversary adjudication pending or commenced before the Postal Service on or after August 5, 1985. It also applies to any adversary adjudication commenced on or after October 1, 1984, and finally disposed of before August 5, 1985, provided that an application for fees and expenses, as described in subpart B of these rules, has been filed with the Postal Service within 30 days after August 5, 1985, and to any adversary adjudication pending on or commenced on or after October 1, 1981, in which an application for fees and other expenses was timely filed and was dismissed for lack of jurisdiction.

[52 FR 6797, Mar. 5, 1987]

§ 960.3 Proceedings covered.

(a) The Act applies to adversary adjudications conducted by the Postal Service. These are:

(1) Adjudications under 5 U.S.C. 554 in which the position of the Postal Service is presented by an attorney or other representative who enters an appearance and participates in the proceeding (for the Postal Service, the types of proceedings generally covered are proceedings relative to false representation and cease and desist orders and mailability under chapter 30 of title 39, U.S.C., with the exception of proceedings under 39 U.S.C. 3008); and

(2) Appeals of decisions of contracting officers made pursuant to section 6 of the Contract Disputes Act of 1978 (41 U.S.C. 605) before the Postal Service Board of Contract Appeals as provided in section 8 of that Act. (41 U.S.C. 607).

(b) The Postal Service may also designate a proceeding not listed in paragraph (a) of this section as an adversary adjudication for purposes of the Act by so stating in an order initiating the proceeding or designating the matter for hearing. The failure to designate a proceeding as an adversary adjudication shall not preclued the filing of an application by a party who believes the proceeding is covered by the Act; whether the proceeding is covered will then be an issue for resolution in proceedings on the application.

(c) If a proceeding includes both matters covered by the Act and matters specifically excluded from coverage, any award made will include only fees and expenses related to covered issues.

[46 FR 45945, Sept. 16, 1981, as amended at 52 FR 6798, Mar. 5, 1987]

§ 960.4 Eligibility of applicants.

(a) To be eligible for an award of attorney fees and other expenses under the Act, the applicant must be a party to the adversary adjudication for which it seeks an award. The term "party" is defined in 5 U.S.C. 551(3). The applicant must show by clear and convincing evidence that it meets all conditions of eligibility set out in this subpart and in subpart B and must submit additional information to verify its eligibility upon order by the adjudicative officer.

(b) The types of eligible applicants are as follows:

(1) An individual with a net worth of not more than $2 million;

(2) The sole owner of an unincorporated business who has a net worth of not more than $7 million, including both personal and business interests, and not more than 500 employees;

(3) A charitable or other tax-exempt organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) with not more than 500 employees;

(4) A cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C.

1141j(a)) with not more than 500 employees; and

(5) Any other partnerships, corporation, association, unit of local government, or organization with a net worth of not more than $7 million and not more than 500 employees.

(c) For the purposes of eligibility, the net worth and number of employees of an applicant shall be determined as of the date the proceeding was initiated, which in proceedings before the Board of Contract Appeals is the date the applicant files its appeal to the Board.

(d) An applicant who owns an unincorporated business will be considered as an "individual" rather than a "sole owner of an unincorporated business" if the issues on which the applicant prevails are related primarily to personal interests rather than to business interests.

(e) The employees of an applicant include all persons who regularly perform services for remuneration for the applicant, under the applicant's direction and control. Part-time employees shall be included on a proportional basis.

(f) The net worth and number of employees of the applicant and all of its affiliates shall be aggregated to determine eligibility. Any individual, corporation or other entity that directly or indirectly controls or owns a majority of the voting shares or other interest of the applicant, or any corporation or other entity of which the applicant directly or indirectly owns or controls a majority of the voting shares or other interest, will be considered an affiliate for purposes of this part, unless the adjudicative officer determines that such treatment would be unjust and contrary to the purposes of the Act in light of the actual relationship between the affiliated entities. In addition, the adjudicative officer may determine that financial relationships of the applicant other than those described in this paragraph constitute special circumstances that would make an award unjust.

(g) An applicant that participates in a proceeding primarily on behalf of one or more other persons or entities that would be ineligible is not itself eligible for an award.

[46 FR 45945, Sept. 16, 1981, as amended at 52 FR 6798, Mar. 5, 1987]

§ 960.5 Standards for awards.

(a) A prevailing applicant may receive an award for fees and expenses incurred in connection with a proceeding, including expenses and fees incurred in filing for an award under the Act, or in a significant and discrete substantive portion of the proceeding, unless the position of the agency over which the applicant has prevailed was substantially justified. The position of the agency includes in addition to the position taken by the agency in the adversary adjudication, the action or failure to act by the agency upon which the adversary adjudication is based. The burden of proof that an award should not be made to an eligible prevailing applicant is on Postal Service counsel.

(b) An award will be reduced or denied if the applicant has unduly or unreasonably protracted the proceeding or if special circumstances make the award sought unjust.

[46 FR 45945, Sept. 16, 1981, as amended at 52 FR 6798, Mar. 5, 1987]

§ 960.6 Allowable fees and expenses.

(a) Awards will be based on rates customarily charged by persons engaged in the business of acting as attorneys, agents and expert witnesses, even if the services were made available without charge or at a reduced rate to the applicant. Attorney fees may not be recovered by parties appearing *pro se* in postal proceedings.

(b) No award for the fee of an attorney or agent under these rules may exceed $75.00 per hour. No award to compensate an expert witness may exceed the highest rate at which the Postal Service pays expert witnesses, which is generally $50.00 per hour. However, an award may also include the reasonable expenses of the attorney, agent, or witness as a separate item, if the attorney, agent or witness ordinarily charges clients separately for such expenses.

(c) In determining the reasonableness of the fee sought for an attorney, agent or expert witness, the adjudicative officer shall consider the following:

(1) If the attorney, agent or witness is in private practice, his or her customary fee for similar services, or, if an employee of the applicant, the fully allocated cost of the services;

(2) The prevailing rate for similar services in the community in which the attorney, agent or witness ordinarily performs services;

(3) The time actually spent in the representation of the applicant;

(4) The time reasonably spent in light of the difficulty or complexity of the issues in the proceeding; and

(5) Such other factors as may bear on the value of the services provided.

(d) The reasonable cost of any study, analysis, engineering report, test, project or similar matter prepared on behalf of a party may be awarded, to the extent that the charge for the service does not exceed the prevailing rate for similar services, and the study or other matter was necessary for preparation of the applicant's case.

[46 FR 45945, Sept. 16, 1981, as amended at 52 FR 6798, Mar. 5, 1987]

§ 960.7 Rulemaking on maximum rates for attorney fees.

(a) If warranted by an increase in the cost of living or by special circumstances (such as limited availability of attorneys qualified to handle certain types of proceedings), the Postal Service may adopt regulations providing that attorney fees may be awarded at a rate higher than $75 per hour in some or all of the types of proceedings covered by this part. The Postal Service will conduct any rulemaking proceedings for this purpose under the informal rulemaking procedures of the Administrative Procedure Act.

(b) Any person may request the Postal Service to initiate a rulemaking proceeding to increase the maximum rate for attorney fees. The request should identify the rate the person believes the Postal Service should establish and the types of proceedings in which the rate should be used. It should also explain fully the reasons why the higher rate is warranted. The Postal Service will respond to the request within 60 days after it is filed, by determining to initiate a rulemaking proceeding, denying the request, or taking other appropriate action.

§ 960.8 Official authorized to take final action under the Act.

The Postal Service official who renders the final agency decision in a proceeding under § 952.26 or § 953.15, or the panel that renders the decision in an appeal before the Board of Contract Appeals under Part 955 procedures, as the case may be, is authorized to take final action on matters pertaining to the Equal Access to Justice Act as applied to the proceeding.

[52 FR 6798, Mar. 5, 1987]

Subpart B—Information Required From Applicants

§ 960.9 Contents of application.

(a) An application for an award of fees and expenses under the Act shall identify the applicant and the proceeding for which an award is sought. The application shall show that the applicant has prevailed and identify the position of the Postal Service in the proceeding that the applicant alleges was not substantially justified. Unless the applicant is an individual, the application shall also state the number of employees of the applicant and describe briefly the type and purpose of its organization or business.

(b) The application shall also include a statement that the applicant's net worth does not exceed $2 million (if an individual) or $7 million (for all other applicants, including their affiliates.) However, an applicant may omit this statement if:

(1) It attaches a copy of a ruling by the Internal Revenue Service that it qualifies as an organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) or, in the case of a tax-exempt organization not required to obtain a ruling from the Internal Revenue Service on its exempt status, a statement that describes the basis for the applicant's belief that it qualifies under such section; or

(2) It states on the application that it is a cooperative association as defined in section 15(a) of the Agricul-

tural Marketing Act (12 U.S.C. 1141j(a)).

(c) The application shall state the amount of fees and expenses for which an award is sought.

(d) The application may also include any other matters that the applicant wishes the Postal Service to consider in determining whether and in what amount an award should be made.

(e) The application shall be signed by the applicant or an authorized officer or attorney of the applicant. It shall also contain or be accompanied by a written verification under oath or under penalty of perjury that the information provided in the application is true and correct.

[46 FR 45945, Sept. 16, 1981, as amended at 52 FR 6798, Mar. 5, 1987]

§ 960.10 Net worth exhibit.

(a) Each applicant except a qualified tax-exempt organization or cooperative association must provide with its application a detailed exhibit showing the net worth of the applicant and any affiliates (as defined in § 960.4(f)) when the proceeding was initiated. The exhibit may be in any form convenient to the applicant that provides full disclosure of the applicant's and its affiliates' assets and liabilities and is sufficient to determine whether the applicant qualifies under the standards in this part. The adjudicative officer may require an applicant to file additional information to determine its eligibility for an award.

(b) Ordinarily, the net worth exhibit will be included in the public record of the proceeding. However, an applicant that objects to public disclosure of information in any portion of the exhibit and believes there are legal grounds for withholding it from disclosure may submit that portion of the exhibit directly to the adjudicative officer in a sealed envelope labeled "Confidential Financial Information", accompanied by a motion to withhold the information from public disclosure. The motion shall describe the information sought to be withheld and explain, in detail, why it falls within one or more of the specific exemptions from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552(b) (1) through (9), why public disclosure of the information would adversely affect the applicant, and why disclosure is not required in the public interest. The material in question shall be served on counsel representing the agency against which the applicant seeks an award, but need not be served on any other party to the proceeding. If the adjudicative officer finds that the information should not be withheld from disclosure, it shall be placed in the public record of the proceeding. Otherwise, any request to inspect or copy the exhibit shall be disposed of in accordance with the Postal Service's established procedures under the Freedom of Information Act, Part 265 of this title.

§ 960.11 Documentation of fees and expenses.

(a) The application shall be accompanied by full documentation of the fees and expenses, including the cost of any study, analysis, engineering report, test, project or similar matter, for which an award is sought. A separate itemized statement shall be submitted for each professional firm or individual whose services are covered by the application, showing the hours spent in connection with the proceeding by each individual, a description of the specific services performed, the rate at which each fee has been computed, any expenses for which reimbursement is sought, the total amount claimed, and the total amount paid or payable by the applicant or by any other person or entity for the services provided. The adjudicative officer may require the applicant to provide vouchers, receipts, or other substantiation for any expenses claimed. In addition, the Board of Contract Appeals may require an applicant to submit to an audit by the Postal Service of its claimed fees and expenses.

(b) Where the case has been sustained in part and denied in part or where the applicant has prevailed in only a significant and discrete substantive portion of the case, the application must be limited to fees and expenses allocable to the portion of the case as to which the applicant was the prevailing party.

[46 FR 45945, Sept. 16, 1981, as amended at 52 FR 6798, Mar. 5, 1987]

§ 960.12 When an application may be filed.

(a) An application may be filed whenever the applicant has prevailed in the proceeding or in a significant and discrete substantive portion of the proceeding, but in no case later than 30 days after the Postal Service's final disposition of the proceeding.

(b) If review or reconsideration is sought or taken of a decision as to which an applicant believes it has prevailed, proceedings for the award of fees shall be stayed pending final disposition of the underlying controversy.

(c) For purposes of this rule, final disposition means the later of (1) the date on which an initial decision or other recommended disposition of the merits of the proceeding by an adjudicative officer or intermediate review board becomes administratively final;

(2) Issuance of an order disposing of any petitions for reconsideration of the Postal Service's final order in the proceeding;

(3) If no petition for reconsideration is filed, the last date on which such a petition could have been filed;

(4) Issuance of a final order or any other final resolution of a proceeding, such as a settlement or voluntary dismissal, which is not subject to a petition for reconsideration;

(5) In proceedings under 39 U.S.C. 3005, on the date that an Administrative Law Judge enters an order indefinitely suspending further proceedings on the basis of a compromise agreement entered into between the parties; or

(6) In proceedings before the Board of Contract Appeals, the Board of Contract Appeals decision on quantum. When the Board decides only entitlement and remands the issue of quantum to the parties, the final disposition occurs when the parties execute an agreement on quantum, or if the parties cannot agree on quantum and resubmit the quantum dispute to the Board, when the Board issues a decision on quantum.

[46 FR 45945, Sept. 16, 1981, as amended at 52 FR 6798, Mar. 5, 1987]

Subpart C—Procedures for Considering Applications

§ 960.13 Filing and service of documents.

Any application for an award or other pleading or document related to an application shall be filed and served on all parties to the proceeding in the same manner as other pleadings in the proceeding, except as provided in § 960.11(b) for confidential financial information.

§ 960.14 Answer to application.

(a) Within 30 days after service of an application, counsel representing the Postal Service may file an answer to the application. Unless the Postal Service counsel requests an extension of time for filing or files a statement of intent to negotiate under paragraph (b) of this section, failure to file an answer within the 30-day period may be treated as a consent to the award requested.

(b) If the Postal Service counsel and the applicant believe that the issues in the fee application can be settled, they may jointly file a statement of their intent to negotiate a settlement. The filing of this statement shall extend the time for filing an answer for an additional 30 days, and further extensions may be granted by the adjudicative officer upon request by Postal Service counsel and the applicant.

(c) The answer shall explain in detail any objections to the award requested and identify the facts relied on in support of the Postal Service's position. If the answer is based on any alleged facts not already in the record of the proceeding, the Postal Service shall include with the answer either supporting affidavits or a request for further proceedings under § 960.19.

§ 960.15 Reply.

Within 15 days after service of an answer, the applicant may file a reply. If the reply is based on any alleged facts not already in the record of the proceeding, the applicant shall include with the reply either supporting affidavits or a request for further proceedings under § 960.19.

§ 960.16 Comments by other parties.

Any party to a proceeding other than the applicant and Postal Service may file comments on an application within 30 days after it is served or on an answer within 15 days after it is served. A commenting party may not participate further in proceedings on the application unless the adjudicative officer determines that the public interest requires such participation in order to permit full exploration of matters raised in the comments.

§ 960.17 Settlement.

The applicant and the Postal Service may agree on a proposed settlement of the award before final action on the application, either in connection with a settlement of the underlying proceeding, or after the underlying proceeding has been concluded. If a prevailing party and Postal Service counsel agree on a proposed settlement of an award before an application has been filed, the application shall be filed with the proposed settlement.

§ 960.18 Further proceedings.

(a) Ordinarily, the determination of an award will be made on the basis of the written record. However, on request of either the applicant or Postal Service counsel, or on his or her own initiative, the adjudicative officer may order further proceedings, such as an informal conference, oral argument, additional written submissions, or an evidentiary hearing. Such further proceedings shall be held only when necessary for full and fair resolution of the issues arising from the application, and shall be conducted as promptly as possible. Whether or not the position of the agency was substantially justified shall be determined on the basis of the entire administrative record that is made in the adversary adjudication for which fees and other expenses are sought.

(b) A request that the adjudicative officer order further proceedings under this section shall specifically identify the information sought or the disputed issues and shall explain why the additional proceedings are necessary to resolve the issues.

[46 FR 45945, Sept. 16, 1981, as amended at 52 FR 6798, Mar. 5, 1987]

§ 960.19 Decision.

(a) The adjudicative officer shall issue an initial decision on the application as promptly as possible after completion of proceedings on the application. The decision shall include written findings and conclusions on the applicant's eligibility and status as a prevailing party, and an explanation of the reasons for any difference between the amount requested and the amount awarded. The decision shall also include, if at issue, findings on whether the Postal Service's position was substantially justified, whether the applicant unduly protracted the proceedings, or whether special circumstances make an award unjust. If the applicant has sought an award against the Postal Service and another agency, the decision shall allocate responsibility for payment of any award made between the Postal Service and the other agency, and shall explain the reasons for the allocation made.

(b) The Board of Contract Appeals shall issue its decision on the application as promptly as possible after completion of proceedings on the application. Whenever possible, the decision shall be made by the same Administrative Judge or panel that decided the contract appeal for which fees are sought. The decision shall be in the format described in paragraph (a) of this section.

[46 FR 45945, Sept. 16, 1981, as amended at 52 FR 6798, Mar. 5, 1987]

§ 960.20 Further Postal Service review.

(a) Either the applicant or Postal Service counsel may seek review of the initial decision on the fee application, in accordance with § 952.25 or § 953.14. If neither the applicant nor the Postal Service counsel seeks review, the initial decision on the application shall become a final decison of the Postal Service 30 days after it is issued. If review is taken, the Judicial Officer will issue a final decision on the application or remand the application to the adjudicative officer for further proceedings.

(b) In Board of Contract Appeals proceedings, either party may seek reconsideration of the decision on the fee application in accordance with 39 CFR 955.30.

[46 FR 45945, Sept. 16, 1981, as amended at 52 FR 6798, Mar. 5, 1987]

§ 960.21 Judicial review.

A party other than the Postal Service may, within 30 days after a determination on the award is made, appeal the determination to the court of the United States having jurisdiction to review the merits of the underlying decision of the agency adversary adjudication in accordance with 5 U.S.C. 504(c)(2).

[52 FR 6799, Mar. 5, 1987]

§ 960.22 Payment of award.

An applicant seeking payment of an award shall submit to the Judicial Officer a copy of the Postal Service's final decision granting the award, accompanied by a statement that the applicant will not seek review of the decision in the United States courts. Requests for payment should be sent to: Judicial Officer, Room 10803, U.S. Postal Service, 475 L'Enfant Plaza W., SW., Washington, DC 20260. The Judicial Officer shall submit certification for payment to the Postal Data Center. The Postal Service will pay the amount awarded to the applicant within 60 days, unless judicial review of the award or of the underlying decision of the adversary adjudication has been sought by the applicant or any other party to the proceeding.

PART 961—RULES OF PRACTICE IN PROCEEDINGS RELATIVE TO EMPLOYEE HEARING PETITIONS UNDER SECTION 5 OF THE DEBT COLLECTION ACT

Sec.

961.1 Authority for rules.
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961.10 Waiver of employee rights.
961.11 Ex parte communications.

AUTHORITY: 39 U.S.C. 204, 401; 5 U.S.C. 5514(a).

SOURCE: 51 FR 1251, Jan. 10, 1986, unless otherwise noted.

§ 961.1 Authority for rules.

These rules are issued by the Judicial Officer pursuant to authority delegated by the Postmaster General.

§ 961.2 Scope of rules.

The rules in this part apply to the hearing provided by section 5 of the Debt Collection Act of 1982, as amended, 5 U.S.C. 5514(a), on the Postal Service's determination of the existence or amount of an employee debt to the Postal Service, or of the terms of the employee's debt repayment schedule. In addition, these rules, as appropriate, apply to a hearing under section 5 of the Debt Collection Act when an Administrative Law Judge or an Administrative Judge in the Judicial Officer Department is designated as the Hearing Official for a creditor Federal agency other than the Postal Service pursuant to an agreement between the Postal Service and that agency.

§ 961.3 Definitions.

(a) "Employee" refers to a current employee of the Postal Service or another Federal agency who is alleged to be indebted to the Postal Service or another creditor Federal agency and whose hearing under section 5 of the Debt Collection Act is being conducted under these rules.

(b) "General Counsel" refers to the General Counsel of the Postal Service and includes a designated representative.

(c) "Hearing Official" refers to an Administrative Law Judge qualified to hear cases under the Administrative Procedure Act, an Administrative Judge appointed under the Contract Disputes Act of 1978, or any other qualified person not under the control or supervision of the Postmaster General, who is designated by the Judicial Officer to conduct the hearing under section 5 of the Debt Collection Act of 1982, as amended, 5 U.S.C. 5514(a).

(d) "Judicial Officer" refers to the Judicial Officer or Acting Judicial Officer of the United States Postal Service.

(e) "Notice of Involuntary Administrative Salary Offsets Under the Debt Collection Act" refers to the formal written notice required by section 5 of the Debt Collection Act before involuntary collection deductions can be taken from an employee's salary.

(f) "Postmaster/Installation Head" refers to the Postal Service official who is authorized under the Postal Service Employee and Labor Relations Manual to make the initial determination of employee indebtedness and to issue the "Notice of Involuntary Administrative Salary Offsets Under the Debt Collection Act."

(g) "Recorder" refers to the Recorder, Judicial Officer Department, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260–6100.

§ 961.4 Employee petition for a hearing and supplement to petition.

(a) If an employee desires a hearing, prescribed by section 5 of the Debt Collection Act, on the Postal Service's determination of the existence or amount of a debt, or on the involuntary repayment terms proposed by the Postal Service, the employee must file a written, signed petition with the Recorder, Judicial Officer Department, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260–6100, on or before the fifteenth (15th) calendar day following the employee's receipt of the Postal Service's "Notice of Involuntary Administrative Salary Offsets Under the Debt Collection Act."

(b) The hearing petition is to include the following:

(1) The words, "Petition for Hearing Under the Debt Collection Act," prominently captioned at the top of the first page;

(2) The name of the employee petitioner and the employee's work and home addresses, and work and home telephone numbers; or other address and telephone number where the employee may be contacted about the hearing proceedings;

(3) A statement of the date the employee received the "Notice of Involuntary Administrative Salary Offsets Under the Debt Collection Act," *and* a copy of the Notice;

(4) A statement indicating whether the employee requests an oral hearing or a hearing based solely on written submissions;

(5) If the employee requests an oral hearing, a statement of the evidence he or she will produce which makes an oral hearing necessary, including a list of witnesses, with their addresses, whom the employee expects to call; the proposed city for the hearing site, with justification for holding the hearing in that city; and recommended alternative dates for the hearing; which should be within 40 days from filing the Petition;

(6) A statement of the grounds upon which the employee objects to the Postal Service's determination of the existence or amount of the debt, or to the proposed offset schedule. This statement should identify and explain with reasonable specificity and brevity the facts, evidence, and legal arguments, if any, which the employee believes support his or her position;

(7) Copies of all records in the employee's possession which relate to the debt; and

(8) If an employee contends that the Postal Service's proposed offset schedule would result in a severe financial hardship on the employee and his or her spouse and dependents, an alternative offset schedule, and a statement and supporting documents indicating for the employee and his or her spouse and dependents for the one year preceding the Postal Service's notice and for the repayment period proposed by the employee in his or her altenative offset schedule, their total income from all sources; assets; liabilities; number of dependents; and expenses for food, housing, clothing, transportation, medical care, and exceptional expenses, if any.

(c) The employee may, if necessary, file with the Recorder, additional information as a Supplement to the Petition on or before the thirtieth (30th) calendar day following the employee's receipt of the Postal Service's "Notice of Involuntary Administrative Salary Offsets Under the Debt Collection Act."

§ 961.5 Effect of Petition filing.

Upon receipt and docketing of the employee's Petition for a hearing, the Recorder will notify the Postmaster/Installation Head and the General Counsel that the Petition has been filed and that pursuant to section 5 of the Debt Collection Act, a timely-filed Petition for a hearing stays further collection action.

§ 961.6 Filing, docketing and serving documents; computation of time; representation of parties.

(a) *Filing.* All documents relating to the Debt Collection Act hearing proceedings must be filed by the employee or the General Counsel with the Recorder. (Normal Recorder office business hours are between 8:15 a.m. and 4:45 p.m., eastern standard or daylight saving time as appropriate during the year.) The Recorder will transmit a copy of each document filed to the other party, and the original to the Hearing Official.

(b) *Docketing.* The Recorder will maintain a docket record of Debt Collection Act hearing petition proceedings and will assign each employee Petition a docket number. After notification of the docket number, the employee and General Counsel should refer to it on any further filings regarding the Petition.

(c) *Time computation.* A filing period under the rules in this part excludes the day the period begins, and includes the last day of the period unless the last day is a Saturday, Sunday, or legal holiday, in which event the period runs until the close of business on the next business day.

(d) *Representation of parties.* After the filing of the Petition, further document transmittals for, or communications with, the Postmaster/Installation Head or Postal Service shall be through their representative, the General Counsel, or, if an appropriate notice of appearance is filed, the General Counsel's designee. If a notice of appearance by an attorney authorized to practice law in any of the United States or the District of Columbia or a territory of the United States is filed in behalf of an employee, further transmissions of documents and other communications with the employee shall be made through his or her attorney rather than directly with the employee.

§ 961.7 Answer to Petition and Supplement to Petition.

If the employee's Petition states reasons to support the employee's position, within 15 days from notice of the Petition, the General Counsel shall file an Answer to the Petition, and attach all available relevant records and documents in support of the Postal Service's claim, and a list of witnesses the Postal Service intends to call if an oral hearing is granted. If the employee files a Supplement to the Petition, the General Counsel, within ten (10) calendar days from the filing of the Supplement with the Recorder must file any Supplemental Answer and records to support the position of the Postal Service.

§ 961.8 Hearing Official authority and responsibilities.

The Hearing Official shall provide a full and fair hearing. The proceedings must be expedited to ensure issuance of the final decision no later than 60 days after the filing of the employee's hearing Petition. The Hearing Official's authority includes, but is not limited to, the following:

(a) Ruling on all offers, motions or requests by the parties;

(b) Issuing any notices, orders or memoranda to the parties concerning the hearing proceedings;

(c) Using telephone conferences with the parties to expedite the proceedings. A memorandum of a telephone conference will be transmitted to both parties;

(d) Determining if an oral hearing should be held; and setting the place, date and time for the hearing or the taking of testimony by telephone conference;

(e) Administering oaths or affirmations to witnesses, and conducting the hearing in a manner to maintain discipline and decorum while assuring that relevant, reliable and probative evidence is elicited on the issues in dispute, but irrelevant, immaterial or repetitious evidence is excluded;

(f) Establishing the record in the case;

(g) Issuing the final decision orally or in writing no later than sixty (60) days after the filing of the employee's hearing Petition. When an oral decision is rendered, a written confirmation will thereafter be sent to the parties. The decision must include the determination of the amount and validity of the alleged debt and, where applicable, the repayment schedule. It should also include findings and reasons.

§ 961.9 Effect of Hearing Official's decision; motion for reconsideration.

The Hearing Official's decision shall be the final administrative determination on the employee's debt or repayment schedule. No reconsideration of the decision will be allowed unless a motion for reconsideration is filed by either party within 10 days from receipt of the decision and shows good reasons for reconsideration. Reconsideration will be allowed only in the discretion of the Hearing Official. A motion for reconsideration by the employee will not operate to stay the collection action authorized by the Hearing Official's decision.

§ 961.10 Waiver of employee rights.

The Hearing Official may determine the employee has waived his or her right to a hearing and the employee's pay shall be offset in accordance with the Postal Service's offset schedule, if the employee:

(a) Files a Petition for hearing after the end of the 15-day period allowed by the Act for filing the Petition, and fails to demonstrate to the satisfaction of the Hearing Official good cause for the delay;

(b) Has received notice to appear at an oral hearing but fails to do so without showing circumstances beyond the employee's control;

(c) Fails to file required submissions or to comply with orders of the Hearing Official, and the failure makes it difficult or impossible to hold the hearing or to issue the decision within the statutory time;

(d) Files a withdrawal of his or her Petition for a hearing with the Recorder.

§ 961.11 Ex parte communications.

Ex parte communications between a Hearing Official or his staff and a party shall not be made. This prohibition does not apply to procedural matters. A memorandum of any communication between the Hearing Official and a party will be transmitted to both parties.

PART 962—RULES OF PRACTICE IN PROCEEDINGS RELATIVE TO THE PROGRAM FRAUD CIVIL REMEDIES ACT

Sec.

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962.27 Limitations.

AUTHORITY: 31 U.S.C. Chapter 38; 39 U.S.C. 401.

SOURCE: 52 FR 12904, Apr. 20, 1987, unless otherwise noted.

§ 962.1 Purpose.

This part establishes the procedures governing the hearing and appeal rights of any person alleged to be liable for civil penalties and assessments under the Program Fraud Civil Remedies Act of 1986 (codified at 31 U.S.C. 3801-3812).

§ 962.2 Definitions.

(a) "Attorney" refers to an individual authorized to practice law in any of the United States or the District of Columbia or a territory of the United States.

(b) "Complaint" refers to the administrative Complaint served by the Reviewing Official on a Respondent pursuant to § 273.8 of this title.

(c) "Initial Decision" refers to the written decision which the Presiding Officer is required by § 962.20 to render, and includes a revised initial decision issued following a remand.

(d) "Investigating Official" refers to the Chief Postal Inspector of the Postal Service or any designee within the United States Postal Inspection Service who serves in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS-16 under the General Schedule.

(e) "Judicial Officer" refers to the Judicial Officer or Acting Judicial Officer of the United States Postal Service or for purposes other than specified in § 962.21 any designee within the Judicial Officer Department.

(f) "Party" refers to the Postal Service or the Respondent.

(g) "Person" refers to any individual, partnership, corporation, association, or private organization.

(h) "Postmaster General" refers to the Postmaster General of the United States or his designee.

(i) "Presiding Officer" refers to an Administrative Law Judge designated by the Judicial Officer to conduct a hearing authorized by 31 U.S.C. 3803.

(j) "Recorder" refers to the Recorder of the United States Postal Service, 475 L'Enfant Plaza West SW., Washington, DC 20260-6100.

(k) "Representative" refers to an attorney or other advocate.

(l) "Respondent" refers to any person alleged to be liable for a civil penalty or assessment under 31 U.S.C. 3802.

(m) "Reviewing Official" refers to the General Counsel of the Postal Service or any designee within the Law Department who serves in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS-16 under the General Schedule.

§ 962.3 Petition for hearing.

Within 30 days of receiving the Postal Service's Complaint, issued pursuant to § 273.8 of this title, alleging liability under 31 U.S.C. 3802, the Respondent may request a hearing under the Program Fraud Civil Remedies Act by filing a written Hearing Petition with the Recorder in accordance with § 962.22(b). The Respondent's Petition must include the following:

(a) The words "Petition for Hearing Under the Program Fraud Civil Remedies Act," or other words reasonably identifying it as such;

(b) The name of the Respondent as well as his or her work and home addresses, and work and home telephone numbers; or other address and telephone number where the Respondent may be contacted about the hearing proceedings;

(c) A statement of the date the Respondent received the Complaint issued by the Reviewing Official;

(d) A statement indicating whether the Respondent requests an oral hearing or a decision on the record;

(e) If the Respondent requests an oral hearing, a statement proposing a city for the hearing site, with justification for holding the hearing in that city, as well as recommended dates for the hearing; and

(f) A statement admitting or denying each of the allegations of liability made in the Complaint, and stating any defense on which the Respondent intends to rely.

§ 962.4 Referral of complaint.

(a) If the Respondent fails to request a hearing within the specified period, the Reviewing Official shall transmit the Complaint to the Judicial Officer for referral to a Presiding Officer, who shall issue an initial decision based upon the information contained in the Complaint.

(b) If the Respondent files a Hearing Petition, the Reviewing Official, upon receiving a copy of the Petition, shall promptly transmit to the Presiding Officer a copy of the Postal Service's Complaint.

§ 962.5 Scope of hearing; evidentiary standard.

(a) A hearing under this part shall be conducted by the Presiding Officer on the record (1) to determine whether the Respondent is liable under 31 U.S.C. 3802, and (2) if so, to determine the amount of any civil penalty or assessment to be imposed.

(b) The Postal Service must prove its case against a Respondent by a preponderance of the evidence.

(c) The parties may offer at a hearing on the merits such relevant evidence as they deem appropriate and as would be admissible under the generally accepted rules of evidence applied in the courts of the United States in nonjury trials, subject, however, to the sound discretion of the Presiding Officer in supervising the extent and manner of presentation of such evidence. In general, admissibility will hinge on relevancy and materiality. However, relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

§ 962.6 Notice of hearing.

(a) Within a reasonable time after receiving the Respondent's Hearing Petition and the Complaint, the Presiding Officer shall serve, in accordance with § 962.23, upon the Respondent and the Reviewing Official, a Notice of Hearing containing the information set forth in paragraph (b) of this section.

(b) The Notice of Hearing required by paragraph (a) of this section must include:

(1) The tentative hearing site, date, and time;

(2) The legal authority and jurisdiction under which the hearing is to be held;

(3) The nature of the hearing;

(4) The matters of fact and law to be decided;

(5) A description of the procedures governing the conduct of the hearing; and

(6) Such other information as the Presiding Officer deems appropriate.

§ 962.7 Hearing location.

An oral hearing under this part shall be held

(a) In the judicial district of the United States in which the Respondent resides or transacts business; or

(b) In the judicial district of the United States in which the claim or statement upon which the allegation of liability under 31 U.S.C. 3802 was made, presented, or submitted; or

(c) In such other place as may be agreed upon by the Respondent and the Presiding Officer.

§ 962.8 Rights of parties.

Any party to a hearing under this part shall have the right

(a) To be accompanied, represented, and advised, by a representative of his own choosing;

(b) To participate in any prehearing or post-hearing conference held by the Presiding Officer;

(c) To agree to stipulations of fact or law, which shall be made part of the record;

(d) To make opening and closing statements at the hearing;

(e) To present oral and documentary evidence relevant to the issues at the hearing;

(f) To submit rebuttal evidence;

(g) To conduct such cross-examination as may be required for a full and true disclosure of the facts; and

(h) To submit written briefs, proposed findings of fact, and proposed conclusions of law.

§ 962.9 Responsibilities and authority of presiding officer.

(a) The Presiding Officer shall conduct a fair and impartial hearing, avoid delay, maintain order, and assure that a record of the proceeding is made.

(b) The Presiding Officer's authority includes, but is not limited to, the following:

(1) Establishing, upon adequate notice to all parties, the date and time of the hearing, as well as, in accordance with § 962.7, selecting the hearing site;

(2) Holding conferences, by telephone or in person, to identify or simplify the issues, or to consider other matters that may aid in the expeditious disposition of the proceeding;

(3) Continuing or recessing the hearing in whole or in part for a reasonable period of time;

(4) Administering oaths and affirmations to witnesses;

(5) Issuing subpoenas, requiring the attendance and testimony of witnesses and the production of all information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence which the Presiding Officer considers relevant and material to the hearing;

(6) Ruling on all offers, motions, requests by the parties, and other procedural matters;

(7) Issuing any notices, orders, or memoranda to the parties concerning the proceedings;

(8) Regulating the scope and timing of discovery;

(9) Regulating the course of the hearing and the conduct of the parties and their representatives;

(10) Examining witnesses;

(11) Receiving, ruling on, excluding, or limiting evidence in order to assure that relevant, reliable and probative evidence is elicited on the issues in dispute, but irrelevant, immaterial or repetitious evidence is excluded;

(12) Deciding cases, upon motion of a party, in whole or in part by summary judgment where there is no disputed issue of material fact;

(13) Establishing the record in the case; and

(14) Issuing a written initial decision containing findings of fact, conclusions of law, and determinations with respect to whether a penalty or assessment should be imposed, and if so, the amount of such penalty or assessment.

§ 962.10 Prehearing conferences.

(a) At a reasonable time in advance of the hearing, and with adequate notice to all parties, the Presiding Officer may conduct, in person or by telephone, one or more prehearing conference to discuss the following:

(1) Simplification of the issues;

(2) The necessity or desirability of amendments to the pleadings, including the need for a more definite statement;

(3) Stipulations or admissions of fact or as to the contents and authenticity of documents;

(4) Limitation of the number of witnesses;

(5) Exchange of witness lists, copies of prior statements of witnesses, and copies of hearing exhibits;

(6) Scheduling dates for the exchange of witness lists and of proposed exhibits;

(7) Discovery;

(8) Possible changes in the scheduled hearing date, time or site; and

(9) Any other matters related to the proceeding.

(b) Within a reasonable time after the completion of a prehearing conference, the Presiding Officer shall issue an order detailing all matters agreed upon by the parties, or ordered by the Presiding Officer, at such conference.

§ 962.11 Respondent access to information.

(a)(1) Except as provided in paragraph (a)(2) of this section, the Respondent, at any time after receiving the Notice of Hearing required by § 962.6, may review, and upon payment of a duplication fee established under § 265.8(c) of this title, may obtain a copy of, all relevant and material documents, transcripts, records and other materials, which relate to the allegations of liability, and upon which the findings and conclusions of the Investigating Official under § 273.5 of this title are based.

(2) The Respondent is not entitled to review or obtain a copy of any document, transcript, record, or other material which is privileged under Federal law.

(b) At any time after receiving the Notice of Hearing required by § 962.6

the Respondent shall be entitled to obtain all exculpatory information in the possession of the Investigating Official or the Reviewing Official relating to the allegations or liability under 31 U.S.C. 3802. Paragraph (a)(2) of this section does not apply to any document, transcript, record, or other material, or any portion thereof, in which such exculpatory information is contained.

(c) Requests to review or copy material under this section must be directed to the Reviewing Official who must respond within a reasonable time.

§ 962.12 Depositions; interrogatories; admission of facts; production and inspection of documents.

(a) *General Policy and protective orders.* The parties are encouraged to engage in voluntary discovery procedures. In connection with any discovery procedure permitted under this part, the Presiding Officer may issue any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense. Such orders may include limitations on the scope, method, time and place for discovery, and provisions for protecting the secrecy of confidential information or documents. Each party shall bear its own expenses relating to discovery.

(b) *Depositions.* (1) After the issuance of a Notice of Hearing described in § 962.6, the parties may mutually agree to, or the Presiding Officer may, upon application of either party and for good cause shown, order the taking of testimony of any person by deposition upon oral examination or written interrogatories before any officer authorized to administer oaths at the place of examination, for use as evidence or for purposes of discovery. The application for order shall specify whether the purpose of the deposition is discovery or for use as evidence.

(2) The time, place, and manner of taking depositions shall be as mutually agreed by the parties, or failing such agreement, governed by order of the Presiding Officer.

(3) No testimony taken by depositions shall be considered as part of the evidence in the hearing unless and until such testimony is offered and received in evidence at such hearing. Depositions will not ordinarily be received in evidence if the deponent is present and can testify personally at the hearing. In such instances, however, the deposition may be used to contradict or impeach the testimony of the witness given at the hearing. In cases submitted for a decision on the record, the Presiding Officer may, in his discretion, receive depositions as evidence in supplementation of that record.

(c) *Interrogatories to parties.* After the issuance of a Notice of Hearing described in § 962.6, a party may serve on the other party written interrogatories to be answered separately in writing, signed under oath and returned within 30 days. Upon timely objection by the party, the Presiding Officer will determine the extent to which the interrogatories will be permitted.

(d) *Admission of facts.* After the issuance of a Notice of Hearing described in § 962.6, a party may serve upon the other party a request for the admission of specified facts. Within 30 days after service, the party served shall answer each requested fact or file objections thereto. The factual propositions set out in the request shall be deemed admitted upon the failure of a party to respond to the request for admission.

(e) *Production and inspection of documents.* Upon motion of any party showing good cause therefor, and upon notice, the Presiding Officer may order the other party to produce and permit the inspection and copying or photographing of any designated documents or objects, not privileged, specifically identified, and their relevance and materiality to the cause or causes in issue explained, which are reasonably calculated to lead to the discovery or admissible evidence. If the parties cannot themselves agree thereon, the Presiding Officer shall specify just terms and conditions in making the inspection and taking the copies and photographs.

(f) *Limitations.* Under no circumstances may a discovery procedure be used to reach

(1) Documents, transcripts, records, or other material which a person is entitled to review pursuant to § 962.11;

(2) The notice sent to the Attorney General from the Reviewing Official under § 273.6 of this title; or

(3) Other documents which are privileged under Federal law.

§ 962.13 Subpoenas.

(a) *General.* Upon written request of either party filed with the Recorder or on his own initiative, the Presiding Officer may issue a subpoena requiring:

(1) *Testimony at a deposition.* The deposing of a witness in the city or county where he resides or is employed or transacts his business in person, or at another location convenient for him that is specifically determined by the Presiding Officer;

(2) *Testimony at a hearing.* The attendance of a witness for the purpose of taking testimony at a hearing; and

(3) *Production of books and papers.* In addition to paragraphs (a)(1) and (a)(2) of this section, the production by the witness at the deposition or hearing of books and papers designated in the subpoena.

(b) *Voluntary cooperation.* Each party is expected (1) to cooperate and make available witnesses and evidence under its control as requested by the other party, without issuance of a subpoena, and (2) to secure voluntary attendance of desired third-party books, papers, documents, or other tangible things whenever possible.

(c) *Requests for subpoenas.* (1) A request for a subpoena shall normally be filed at least:

(i) 15 days before a scheduled deposition where the attendance of a witness at a deposition is sought;

(ii) 30 days before a scheduled hearing where the attendance of a witness at a hearing is sought.

(2) A request for a subpoena shall state the reasonable scope and general relevance to the case of the testimony and of any books, papers, documents, or other tangible things sought.

(3) The Presiding Officer, in his discretion, may honor requests for subpoenas not made within the time limitations specified in this paragraph.

(d) *Requests to quash or modify.* Upon written request by the person subpoenaed or by a party, made within 10 days after service but in any event not later than the time specified in the subpoena for compliance, the Presiding Officer may (1) quash or modify the subpoena if it is unreasonable and oppressive or for other good cause shown, or (2) require the person in whose behalf the subpoena was issued to advance the reasonable cost of producing subpoenaed books and papers. Where circumstances require, the Presiding Officer may act upon such a request at any time after a copy has been served upon the opposing party.

(e) *Form; issuance.* (1) Every subpoena shall state the title of the proceeding, shall cite 31 U.S.C. 3804(b) as the authority under which it is issued, and shall command each person to whom it is directed to attend and give testimony, and if appropriate, to produce specified books and papers at a time and place therein specified. In issuing a subpoena to a requesting party, the Presiding Officer shall sign the subpoena and may, in his discretion, enter the name of the witness and otherwise leave it blank. The party to whom the subpoena is issued shall complete the subpoena before service.

(2) Where the witness is located in a foreign country, a letter rogatory or subpoena may be issued and served under the circumstances and in the manner provided in 28 U.S.C. 1781-1784.

(f) *Service.* (1) The party requesting issuance of a subpoena shall arrange for service.

(2) A subpoena requiring the attendance of a witness at a deposition or hearing may be served at any place. A subpoena may be served by a United States marshall or deputy marshall, or by any other person who is not a party and not less than 18 years of age. Service of a subpoena upon a person named therein shall be made by personally delivering a copy to that person and tendering the fees for one day's attendance and the mileage provided by 28 U.S.C. 1821 or other applicable law.

(3) The party at whose instance a subpoena is issued shall be responsible for the payment of fees and mileage of the witness and of the officer who serves the subpoena. The failure to make payment of such charges on demand may be deemed by the Presiding Officer as sufficient ground for

striking the testimony of the witness and the evidence the witness has produced.

§ 962.14 Enforcement of subpoenas.

In the case of contumacy or refusal to obey a subpoena issued pursuant to §§ 962.9(b)(5) and 962.13, the district courts of the United States have jurisdiction to issue an appropriate order for the enforcement of such subpoena. Any failure to obey such order of the court may be punishable as contempt. In any case in which the Postal Service seeks the enforcement of a subpoena under this section, the Postal Service shall request the Attorney General to petition the district court for the district in which a hearing under this part is being conducted or in which the person receiving the subpoena resides or conducts business to issue such an order.

§ 962.15 Sanctions.

(a) The Presiding Officer may sanction a person, including any party or representative, for

(1) Failing to comply with a lawful order or prescribed procedure;

(2) Failing to prosecute or defend an action; or

(3) Engaging in other misconduct that interferes with the speedy, orderly, or fair conduct of the hearing.

(b) Any such sanction, including but not limited to those listed in paragraphs (c), (d), and (e) of this section, shall reasonably relate to the severity and nature of the failure or misconduct.

(c) Failure to comply with an order. When a party fails to comply with an order, including an order for taking a deposition, the production of evidence within the party's control, or a request for admission, the Presiding Officer may:

(1) Draw an inference in favor of the requesting party with regard to the information sought;

(2) Prohibit such party from introducing evidence concerning, or otherwise relying upon, testimony relating to the information sought;

(3) Permit the requesting party to introduce secondary evidence concerning the information sought; and

(4) Strike any part of the pleadings or other submissions of the party failing to comply with such request.

(d) Failure to prosecute or defend. If a party fails to prosecute or defend an action under this part commenced by service of a Complaint, the Presiding Officer may dismiss the action or enter an order of default.

(e) Failure to make timely filing. The Presiding Officer may refuse to consider any motion or other pleading, report, or response which is not filed in a timely fashion.

§ 962.16 Disqualification of reviewing official or presiding official.

If a Respondent believes, in good faith, that the Reviewing Official or Presiding Officer should be disqualified because of personal bias, or other reason, the Respondent may file a timely and sufficient affidavit alleging such belief with supporting evidence. If the Presiding Officer finds that such allegations concerning the Reviewing Official are meritorious, he may direct the Reviewing Official to disqualify himself and request the appointment of a new Reviewing Official. Where a Respondent seeks the disqualification of a Presiding Officer, such Presiding Officer, may, in his discretion, disqualify himself at any time during the proceeding. In the event a Reviewing Official or Presiding Officer withdraws from a hearing, the proceeding shall be stayed until the assignment of a new Reviewing Official or Presiding Officer.

§ 962.17 Ex parte communications.

Communications between a Presiding Officer and a party shall not be made on any matter in issue unless on notice and opportunity for all parties to participate. This prohibition does not apply to procedural matters. A memorandum of any communication between the Presiding Officer and a party shall be transmitted by the Presiding Officer to all parties.

§ 962.18 Post-hearing briefs.

Post-hearing briefs and reply briefs may be submitted upon such terms as established by the Presiding Officer at the conclusion of the hearing.

§ 962.19 Transcript of proceedings.

Testimony and argument at hearings shall be reported verbatim, unless the Presiding Officer orders otherwise. Transcripts or copies of the proceedings may be obtained by the parties at such rates as may be fixed by contract between the reporter and the Postal Service.

§ 962.20 Initial decision.

(a) After the conclusion of the hearing, and the receipt of briefs, if any, from the parties, the Presiding Officer shall issue a written initial decision, including his or her findings and determinations. Such decision shall include the findings of fact and conclusions of law which the Presiding Officer relied upon in determining whether the Respondent is liable under 31 U.S.C. 3802, and, if liability is found, shall set forth the amount of any penalties and assessments imposed.

(b) The Presiding Officer shall promptly send to each party a copy of his or her initial decision, and a statement describing the right of any person determined to be liable under 31 U.S.C. 3802, to appeal, in accordance with § 962.21, the decision of the Presiding Officer to the Judicial Officer.

(c) Unless the Respondent appeals the Presiding Officer's initial decision, such decision, including the findings and determinations, is final.

§ 962.21 Appeal of initial decision to judicial officer.

(a) *Notice of appeal and supporting brief.* (1) A Respondent may appeal an adverse initial decision by filing, within 30 days after the Presiding Officer issues an initial decision, a Notice of Appeal with the Recorder. The Judicial Officer may extend the filing period if the Respondent files a request for an extension within the initial 30-day period and demonstrates good cause for such extension.

(2) The Respondent's Notice of Appeal must be accompanied by a written brief specifying the Respondent's exceptions, and any reasons for such exceptions, to the Presiding Officer's initial decision.

(3) Within 30 days of receiving the Respondent's brief, the Reviewing Official may file with the Judicial Officer a response to the Respondent's specified exceptions to the Presiding Officer's initial decision.

(b) *Form of review.* (1) Review by the Judicial Officer will be based entirely on the record and written submissions.

(2) The Judicial Officer may affirm, reduce, reverse, or remand any penalty or assessment determined by the Presiding Officer.

(3) The Judicial Officer shall not consider any objection that was not raised in the hearing unless the interested party demonstrates that the failure to raise the objection before the Presiding Officer was caused by extraordinary circumstances.

(4) If any party demonstrates to the satisfaction of the Judicial Officer that additional evidence not presented at the hearing is material and that there were reasonable grounds for the failure to present such evidence, the Judicial Officer shall remand the matter to the Presiding Officer for consideration of such additional evidence.

(c) *Decision of judicial officer.* (1) The Judicial Officer shall promptly serve each party to the appeal with a copy of his decision and a statement describing the right to judicial review under 31 U.S.C. 3805 of any Respondent determined to be liable under 31 U.S.C. 3802.

(2) The decision of the Judicial Officer constitutes final agency action and becomes final and binding on the parties 60 days after it is issued unless a petition for judicial review is filed.

§ 962.22 Form and filing of documents.

(a) Every pleading filed in a proceeding under this part must

(1) Contain a caption setting forth the title of the action, the docket number (after assignment by the Recorder), and a designation of the document (e.g., "Motion to Quash Subpoena");

(2) Contain the name, address, and telephone number of the party or other person on whose behalf the paper was filed, or the name, address and telephone number of the repre

sentative who prepared such paper; and

(3) Be signed by the party or other person submitting the document, or by such party's or person's representative.

(b) The original and three copies of all pleadings and documents in a proceeding conducted under this part shall be filed with the Recorder, Judicial Officer Department, United States Postal Service, 475 L'Enfant Plaza West SW., Washington, DC 20260-6100. Normal Recorder business hours are between 8:15 a.m. and 4:45 p.m., eastern standard or daylight saving time. The Recorder will transmit a copy of each document filed to the other party, and the original to the Presiding Officer.

(c) Pleadings or document transmittals to, or communications with, the Postal Service, other than to the Recorder under paragraph (b) of this section, shall be made through the Reviewing Official or designated Postal Service attorney. If a notice of appearance by a representative is filed on behalf of a Respondent, pleadings or document transmittals to, or communications with, the Respondent shall be made through his representative.

§ 962.23 Service of notice of hearing, other documents.

Unless otherwise specified, service of a Notice of Hearing or any other document under this part must be effected by registered or certified mail, return-receipt requested, or by personal delivery. In the case of personal service, the person making service shall, if possible, secure from the party or other person sought to be served, or his or her agent, a written acknowledgement of receipt, showing the date and time of such receipt. If the person upon whom service is made declines to acknowledge receipt, the person effecting service shall execute a statement, indicating the time, place and manner of service, which shall constitute evidence of service.

§ 962.24 Computation of time.

(a) In computing any period of time provided for by this part, or any order issued pursuant to this part, the time begins with the day following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday, or legal holiday observed by the Federal Government, in which event it includes the next business day.

(b) When the applicable period of time is less than seven days, intermediate Saturdays, Sundays, and legal holidays observed by the Federal Government shall be excluded from the computation.

§ 962.25 Continuances and extensions.

Continuances and extensions may be granted under these rules for good cause shown.

§ 962.26 Settlement.

(a) Either party may make offers of settlement or proposals of adjustment at any time.

(b) The Reviewing Official has the exclusive authority to compromise or settle any allegations of liability under 31 U.S.C. 3802 without the consent of the Presiding Officer at any time after the date on which the Reviewing Official is permitted to refer allegations of liability to a Presiding Officer and before the date on which the Presiding Officer issues an initial decision.

(c) The Postmaster General has the exclusive authority to compromise or settle any penalty or assessment determined under this part at any time after the date on which the Presiding Officer issues an initial decision, or at any time after the date on which the Judicial Officer issues a decision on appeal, except during the pendency of an appeal to the appropriate United States district court pursuant to 31 U.S.C. 3805 or during the pendency of an action to collect any penalties or assessments pursuant to 31 U.S.C. 3806.

(d) The Attorney General has the exclusive authority to compromise or settle any penalty or assessment the determination of which is the subject of a pending petition for judicial review, or a pending action to recover such penalty or assessment.

(e) The Reviewing Official may recommend settlement terms to the Postmaster General, or the Attorney General, as appropriate.

§ 962.27 Limitations.

A hearing under this part concerning a claim or statement allegedly made, presented, or submitted in violation of 31 U.S.C. 3802 shall be commenced within six years after the date on which such claim or statement is made, presented, or submitted.

PART 963—RULES OF PRACTICE IN PROCEEDINGS RELATIVE TO VIOLATIONS UNDER 39 U.S.C. 3008

Sec.

963.1 Authority for the rules.
963.2 Scope of the rules.
963.3 Petition; notice of hearing; answer; filing and copies of documents; summary judgment.
963.4 Presiding Officer.
963.5 Appearances.
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963.18 Initial decision.
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963.20 Final agency decision.
963.21 Official record.
963.22 Public information.

AUTHORITY: 39 U.S.C. 204, 401, 3008.

SOURCE: 52 FR 18912, May 20, 1987, unless otherwise noted.

§ 963.1 Authority for the rules.

These rules of practice are issued by the Judicial Officer of the U.S. Postal Service pursuant to authority delegated by the Postmaster General (39 CFR 224.1(c)(4)).

§ 963.2 Scope of the rules.

These rules of practice are applicable to cases in which a Field Division General Manager/Postmaster (hereinafter, "Postmaster") has issued a complaint, pursuant to 39 U.S.C. 3008(d), alleging violation of a prohibitory order, and in which the alleged violator has petitioned for a hearing in the matter. As provided in 39 U.S.C. 3008(h), Subchapter II of Chapter 5 (relating to administrative procedure) and Chapter 7 (relating to judicial review) of Part I of Title 5, U.S.C., do not apply to the hearings authorized by 39 U.S.C. 3008(d).

§ 963.3 Petition; notice of hearing; answer; filing and copies of documents; summary judgment.

(a) *Petition.* Anyone against whom a complaint has been issued pursuant to 39 U.S.C 3008(d) may submit to the Postmaster a petition for hearing on the alleged violation. The petition must be in writing, signed by the petitioner or his attorney, and filed with the Postmaster on or before the 15th day after receipt of the complaint. The petition shall state the reasons why the petitioner believes the complaint to be erroneous. No petition received after the 15th day will be considered to have been filed on time, unless it was duly sent to the Postmater via certified mail, deposited in the U.S. mail on or before the 15th day. The Postmaster will forward each timely petition to the Recorder, Judicial Officer Department, U.S. Postal Service, Washington, DC 20260-6101.

(b) *Notice of hearing.* Upon receiving a petition, the Recorder shall schedule a hearing for a date not later than 30 days after the date of receipt, issue and send a notice of hearing to the parties, and send a copy of the petition to the General Counsel of the U.S. Postal Service.

(c) *Answer.* The General Counsel shall file with the Recorder an answer to the petition within 15 days after the date of receiving a copy thereof. A certified copy of the material documents from the Postmaster's case file (i.e., of the PS Forms 2150, *Notice for Prohibitory Order Against Sender of Pandering Advertisement in the Mails*, 2152, *Prohibitory Order*, and 2153, *Complaint*, underlying mail pieces and pertinent return receipts) shall be appended to the answer.

(d) *Filing and copies of documents.* With the exception of the initial petition, all documents shall be filed with the Recorder in triplicate at the address set forth above. The Recorder shall promptly provide copies to the other party to the proceeding and to the presiding officer.

(e) *Summary Judgment.* Upon motion of either the General Counsel or the petitioner, or on his own initiative, the presiding officer may find that the petition and answer present no genuine and material issues of fact requiring an evidentiary hearing, and thereupon may render an initial decision upholding or dismissing the complaint. The initial decision shall become the final agency decision if a timely appeal is not taken.

[52 FR 18912, May 20, 1987; 52 FR 20599, June 2, 1987]

§ 963.4 Presiding Officer.

(a) The presiding officer shall be an Administrative Law Judge or an Administrative Judge qualified in accordance with law. The Judicial Officer assigns cases under this part. Judicial Officer includes Associate Judicial Officer upon delegation thereto. The Judicial Officer may, on his own initiative or for good cause found, preside at the reception of evidence.

(b) The presiding officer has authority to:

(1) Take such action as may be necessary properly to preside over the proceeding and render decision therein;

(2) Render an initial decision, if the presiding officer is not the Judicial Officer, which becomes the final agency decision unless a timely appeal is taken; the Judicial Officer may issue a tentative or a final decision.

§ 963.5 Appearances.

(a) *Petitioner.* A petitioner may appear and be heard in person or by attorney. An attorney may practice before the Postal Service in accordance with applicable rules issued by the Judicial Officer (see Part 951 of this chapter). When a petitioner is represented by an attorney, all pleadings and other papers to be served on petitioner after entry of the attorney's appearance shall be mailed to the attorney. A petitioner must promptly file notice of any change of attorney.

(b) *Postal Service.* The Postal Service will be represented by its General Counsel or any attorney designated by the General Counsel.

§ 963.6 Computation of time.

A designated period of time under these rules means calendar days, excludes the day the period begins, and includes the last day of the period unless the last day is a Saturday, Sunday, or legal holiday, in which case the period runs until the close of business on the next business day.

§ 963.7 Location of hearing.

Hearings are held at the headquarters of the Postal Service, Washington, DC 20260, or other locations designated by the presiding officer.

§ 963.8 Change of place of hearing.

Not later than the date fixed for the filing of the answer, a party may file a request that a hearing be held to receive evidence in his behalf at a place other than that designated for hearing in the notice. The party shall support his request with a statement outlining:

(a) The evidence to be offered in such place;

(b) The names and addresses of the witnesses who will testify;

(c) The reasons why such evidence cannot be produced at Washington, DC.

The presiding officer shall consider the convenience and necessity of the parties and the relevance of the evidence to be offered.

§ 963.9 Election as to hearing.

If both parties elect, an oral hearing may be waived and the matter submitted for decision on the basis of the petition and answer, and of any documentary evidence or briefs requested by the presiding officer. The written election to waive oral hearing must be received by the Recorder no later than 10 days prior to the scheduled hearing date.

§ 963.10 Continuances and extensions.

Continuances and extensions will be granted by the presiding officer for good cause shown.

§ 963.11 Default.

If a petitioner, without notice or cause satisfactory to the presiding officer, fails to appear at the hearing or comply with any of the provisions of

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these rules or an order issued by the presiding officer, the petitioner may be deemed to have abandoned his petition and to have acquiesced in the allegations of the complaint. The presiding officer thereupon may find the petitioner to be in default and refer the matter to the Judicial Officer for dismissal of the petition.

§ 963.12 Settlement agreements.

These rules do not preclude the disposition of any matter by agreement between the parties at any stage of the proceeding.

§ 963.13 Subpoenas and witness fees not authorized.

The Postal Service is not authorized to issue subpoenas requiring the attendance or testimony of witnesses, nor to pay fees and expenses for a petitioner's witnesses or for depositions requested by a petitioner.

§ 963.14 Discovery.

Discovery is to be conducted on a voluntary basis to the extent possible. The presiding officer may, upon application of either party, order such discovery as he deems reasonable and necessary. Discovery may include one or more of the following: production of documents, requests for admissions, interrogatories, depositions, and witness lists. The presiding officer will establish the terms upon which requested discovery will be allowed.

§ 963.15 Evidence.

(a) In general, admissibility will hinge on relevancy and materiality. However, relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

(b) Testimony shall be given under oath or affirmation and witnesses are subject to cross-examination.

(c) Agreed statements of fact are encouraged and may be received in evidence.

§ 963.16 Transcript.

Testimony and argument at hearings shall be reported verbatim, unless the presiding officer otherwise orders. Transcripts or copies of the proceedings are supplied to the parties at such rate as may be fixed by contract between the reporter and Postal Service. Any party desiring a copy of the transcript shall order it from the contract reporter in a timely manner to avoid delay in filing briefs.

§ 963.17 Proposed findings of fact and conclusions of law.

(a) Each party who participates in the hearing may, unless the presiding officer orders otherwise, submit proposed findings of fact, conclusions of law, orders, and supporting reasons either in writing or orally at the discretion of the presiding officer. Unless given orally, the date set for filing of proposed findings of fact, conclusions of law, orders, and supporting reasons shall be within 15 days after the delivery of the official transcript to the Recorder, who shall notify both parties of the date of its receipt. The filing date for proposed findings of fact, conclusions of law, orders, and supporting reasons shall be the same for both parties. If not submitted by such date unless extension of time for the filing thereof is granted, they will not be included in the record or given consideration.

(b) Except when presented orally before the close of the hearing, proposed findings of fact shall be set forth in serially numbered paragraphs and shall state with particularity all evidentiary facts in the record with appropriate citations to the transcript or exhibits supporting the proposed findings. Each proposed conclusion shall be stated separately.

[52 FR 18912, May 20, 1987; 52 FR [illegible], June 2, 1987]

§ 963.18 Initial decision.

Unless given orally at the conclusion of the hearing, the presiding officer shall render an initial decision as expeditiously as practicable following the conclusion of the hearing and the receipt of the proposed findings and conclusions, if any. The initial decision becomes the final agency decision if a timely appeal is not taken.

§ 963.19 Appeal.

Either party may file exceptions in a brief on appeal to the Judicial Officer within 15 days after receipt of the initial or tentative decision unless additional time is granted. A reply brief may be filed within 15 days after the receipt of the appeal brief by the opposing party. The Judicial Officer has all powers of a presiding officer and is authorized to decide all issues de novo.

§ 963.20 Final agency decision.

The Judicial Officer, or by delegation the Associate Judicial Officer, renders the final agency decision which will be served upon the parties. If the decision is that the Postal Service's prohibitory order was violated, the Recorder shall provide a certified copy of the record to the General Counsel for use in seeking court enforcement of the order.

§ 963.21 Official record.

The transcript of testimony together with all pleadings, orders, exhibits, briefs, and other documents filed in the proceeding constitute the official record of the proceeding.

§ 963.22 Public information.

The Law Librarian of the Postal Service maintains for public inspection in the Law Library copies of all initial, tentative, and final agency decisions and orders. The Recorder maintains the complete official record of every proceeding.

PART 964—RULES OF PRACTICE GOVERNING DISPOSITION OF MAIL WITHHELD FROM DELIVERY PURSUANT TO 39 U.S.C. 3003, 3004

Sec.
964.1 Authority for rules.
964.2 Scope of rules.
964.3 Customer petitions; notice of hearing; answer; summary judgment.
964.4 Hearings.
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964.6 Default.
964.7 Presiding officers.
964.8 Subpoenas and witness fees not authorized.
964.9 Discovery; interrogatories; admission of facts; production; and inspection of documents.

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964.10 Evidence.
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964.18 Compromise and informal disposition.
964.19 Orders.
964.20 Modification or revocation of orders.
964.21 Official record.
964.22 Public information.
964.23 Ex Parte communications.

Authority: 39 U.S.C. 204, 401, 3003, 3004.

Source: 52 FR 36763, Oct. 1, 1987, unless otherwise noted.

§ 964.1 Authority for rules.

These rules of practice are issued by the Judicial Officer of the United Postal Service pursuant to authority delegated by the Postmaster General (39 CFR 224.1(c)(4)).

§ 964.2 Scope of rules.

The rules in this part provide for administrative review of cases in which the Chief Postal Inspector or his delegate, acting pursuant to 39 U.S.C. 3003(a), has withheld from delivery mail which he believes is involved in a scheme described in section 3003(a), and cases in which the Chief Postal Service Inspector or his delegate, acting pursuant to 39 U.S.C. 3004, determines that letters or parcels sent in the mail are addressed to places not the residence or regular business address of the person for whom they are intended to enable the person to escape identification.

§ 964.3 Customer petitions; notice of hearing; answer; summary judgment.

(a) *Petition.* Any addressee who receives notice from the Chief Postal Inspector or his delegate that his mail has been withheld pursuant to 39 U.S.C. 3003(a) or 3004 may oppose such action by filing with the Judicial Officer a written Petition stating the reasons for his or her opposition. The Petition, signed by the Petitioner or his attorney, shall be filed by sending the Petition via certified mail to the

best copy available

Recorder, Judicial Officer Department, U.S. Postal Service, Washington, DC 20260-6100. The Petition must be postmarked within 14 days of the date upon which the Petitioner received the notice. The failure of an addressee who has received notice of withheld mail to file a Petition opposing such action with the Judicial Officer shall constitute a waiver of hearing and further procedural steps by the addressee. The General Counsel of the Postal Service shall thereupon file the matter with the Judicial Officer for issuance of a final order pursuant to § 964.19. Such referral shall contain a statement of the basis for the detention, evidence that the notice of the detention and the addressee's right to petition for review under this part were served on the addressee in person or by mailing a copy to the address to which the detained mail is directed, the date of such service, and a copy of the proposed order sought by the General Counsel.

(b) *Notice of hearing.* On receipt of the Petition, the Recorder shall schedule a hearing on a date not later than 28 days after the date of receipt. A Notice of Hearing shall be sent to the Petitioner. A copy of the Notice of Hearing and the Petition shall be sent to the General Counsel of the U.S. Postal Service.

(c) *Answer.* The General Counsel of the Postal Service shall file an Answer to the Petition within 10 days of receipt of the Petition from the Recorder.

(d) *Summary judgment.* Upon motion of either the General Counsel or the Petitioner, or upon his own initiative, the presiding officer may find that the Petition and Answer present no material issues of fact requiring an evidentiary hearing and thereupon may render an initial decision granting or dismissing the Petition. The initial decision shall become the final agency decision if a timely appeal is not taken pursuant to § 964.16 of this part.

[52 FR 36763, Oct. 1, 1987, as amended at 53 FR 4849, Feb. 18, 1988]

§ 964.4 Hearings.

Hearings are held at the Headquarters of the U.S. Postal Service, Washington, DC, or such other location as may be designated by the presiding officer. Not later than 10 days prior to the date fixed for the hearing, a party may file a request that a hearing be held to receive evidence in his behalf at a place other than that designated for hearing in the notice. He shall support his request with a statement outlining:

(a) The evidence to be offered in such place;

(b) The names and addresses of the witnesses who will testify; and

(c) The reasons why such evidence cannot be produced at Washington, DC.

The presiding officer shall give consideration to the convenience and necessity of the parties and the relevance of the evidence to be offered.

§ 964.5 Election as to hearing.

If both parties elect, they may waive an oral hearing and submit the matter for decision on the basis of the Petition and Answer, subject to the authority of the presiding officer to require the parties to furnish such further evidence or such briefs as necessary. The request to waive oral hearing should be filed not later than 10 days prior to the date set for hearing.

§ 964.6 Default.

If a Petitioner fails to appear at the hearing without notice or without adequate cause the presiding officer may issue an order dismissing the Petition and refer the matter to the Judicial Officer for issuance of the order provided for under § 964.19. If a Petitioner fails to appear at the hearing without notice or without adequate cause the presiding officer may issue an order dismissing the Petition. An order of dismissal issued under this section may be appealed to the Judicial Officer within 10 days from the date of the order.

[52 FR 36763, Oct. 1, 1987, as amended at 53 FR 4849, Feb. 18, 1988]

§ 964.7 Presiding officers.

(a) The presiding officer shall be an Administrative Law Judge qualified in accordance with law. The Judicial Officer shall assign cases upon rotation as far as practicable. The Judicial Officer may on his own initiative or for good cause shown, preside at the reception of evidence.

(b) The presiding officer has authority to:

(1) Administer oaths and affirmations;

(2) Examine witnesses;

(3) Rule upon offers of proof, admissibility of evidence and matters of procedure;

(4) Order any pleadings amended upon motion of a party at any time prior to the close of the hearing;

(5) Maintain discipline and decorum and exclude from the hearing any person acting in an indecorous manner;

(6) Require the filing of briefs or memoranda of law on any matter upon which he is required to rule;

(7) Order prehearing conferences for the purpose of the settlement or simplification of issues by the parties or for any other purpose he believes will facilitate the processing of the proceeding;

(8) Order the proceeding reopened at any time prior to his decision for the receipt of additional evidence;

(9) Render an initial decision, which becomes the final agency decision unless a timely appeal is taken: The Judicial Officer may issue a tentative or a final decision;

(10) Rule upon applications and requests filed under § 964.9 of this part.

§ 964.8 Subpoenas and witness fees not authorized.

The Postal Service is not authorized to issue subpoenas requiring the attendance or testimony of witnesses, nor to pay fees and expenses for a Petitioner's witnesses or for depositions requested by a Petitioner.

§ 964.9 Discovery; interrogatories; admission of facts; production and inspection of documents.

(a) *General policy and protective orders.* The parties are encouraged to engage in voluntary discovery procedures. In connection with any discovery procedure permitted under this part, the presiding officer may issue any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense. Such orders may include limitations on the scope, method, time and place for discovery, and provisions for protecting confidential information or documents from unwarranted public disclosure. Each party shall bear its own expenses relating to discovery.

(b) *Depositions.* (1) After the issuance of a notice of hearing described in § 964.3 of this part, the parties may mutually agree to, or the presiding officer may, upon application of either party and for good cause shown, order the taking of testimony of any person by deposition upon oral examination or written interrogatories before any officer authorized to administer oaths at the place of examination, for use as evidence or for purposes of discovery. The application for order shall specify whether the purpose of the deposition is discovery or for use as evidence, or both.

(2) The time, place, and manner of taking depositions shall be as mutually agreed by the parties, or failing such agreement, governed by order of the presiding officer.

(3) No testimony taken by depositions shall be considered as part of the evidence in the hearing unless and until such testimony is offered and received in evidence at such hearing. Depositions will not ordinarily be received in evidence if the deponent is present and can testify personally at the hearing. In such instances, however, the deposition may be used to contradict or impeach the testimony of the witness given at the hearing. In cases submitted on the record, the presiding officer may, in his discretion, receive depositions as evidence in supplementation of the record.

(c) *Interrogatories to parties.* Not later than 5 days after the filing of the Answer described in § 964.3, a party may serve on the other party written interrogatories to be answered separately in writing, signed under oath and returned within 10 days. Upon timely objection by the party, the presiding officer will determine the extent to which the interrogatories will be permitted.

(d) *Admission of facts.* Not later than 5 days after the filing of the Answer described in § 964.3, a party may serve upon the other party a request for the admission of specified facts. Within 10 days after receipt of the request for admissions, the party served shall admit or answer each specified fact or file objections thereto. Any factual propositions set out in the request to which a party fails to respond shall be deemed admitted.

(e) *Production and inspection of documents.* Upon motion of any party showing good cause therefor, and upon notice, the presiding officer may order the other party to produce and permit the inspection and copying or photographing of any designated documents and or objects, provided that such documents and objects are not privileged, their relevance to the cause or causes in issue is explained, and they are reasonably calculated to lead to the discovery of admissible evidence. If the parties cannot themselves agree thereon, the presiding officer shall specify the terms and conditions for making the inspection and taking the copies and photographs.

§ 964.10 Evidence.

(a) In general, admissibility will hinge on relevancy and materiality. However, relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

(b) Testimony shall be given under oath or affirmation and witnesses shall be subject to cross-examination.

(c) Agreed statements of fact are encouraged and may be received in evidence.

§ 964.11 Transcript.

Testimony and argument at hearings shall be reported verbatim, unless the presiding officer orders otherwise. Transcripts or copies of the proceedings are supplied to the parties at such rate as may be fixed by contract between the reporter and Postal Service. Any party desiring a copy of the transcript shall order it from the contract reporter in a timely manner to avoid delay in filing briefs.

§ 964.12 Computation of time.

A designated period of time under these rules means calendar days, excludes the day the period begins, and includes the last day of the period unless the last day is a Saturday, Sunday, or legal holiday, in which case the period runs until the close of business on the next business day.

§ 964.13 Continuances and extensions.

Continuances and extensions will be granted by the presiding officer for good cause shown.

§ 964.14 Proposed findings of fact and conclusions of law.

(a) Each party to a proceeding, except one who fails to answer the Petition or, having answered, either fails to appear at the hearing or indicates in the answer that he does not desire to appear, may, unless at the discretion of the presiding officer such is not appropriate, submit proposed findings of fact, conclusions of law, orders and supporting reasons either in oral or written form in the discretion of the presiding officer. The presiding officer may also require parties to submit proposed findings of fact, conclusions of law, orders, and supporting reasons. Unless given orally, the date set for filing of proposed findings of fact, conclusions of law, orders and supporting reasons shall be within [illegible] days after the delivery of the official transcript to the Recorder who shall notify both parties of the date of its receipt. The filing date for proposed findings of fact, conclusions of law, orders and supporting reasons shall be the same for both parties. If not submitted by such date, unless extension of time for the filing thereof is granted, they will not be included in the record or given consideration.

(b) Except when presented orally before the close of the hearing, proposed findings of fact shall be set forth in serially numbered paragraphs and shall state with particularity all evidentiary facts in the record with appropriate citations to the transcript or exhibits supporting the proposed finding. Each proposed conclusion shall be separately stated.

§ 964.15 Decisions.

(a) *Initial decision by Administrative Law Judge.* A written initial decision shall be rendered by an Administrative Law Judge with all due speed. The initial decision shall include findings and conclusions with the reasons therefor upon all the material issues of fact or law presented in the record, and the appropriate orders or denial thereof. The initial decision shall become the final agency decision unless an appeal is taken in accordance with § 964.16.

(b) *Tentative or final decision by the Judicial Officer.* When the Judicial Officer presides at the hearing he shall issue a final or a tentative decision. Such decision shall include findings and conclusions with the reasons therefor upon all the material issues of fact or law presented in the record, and the appropriate orders or denial thereof. The tentative decision shall become the final agency decision unless exceptions are filed in accordance with § 964.16.

§ 964.16 Appeal.

(a) Either party may file exceptions in a brief on appeal to the Judicial Officer within 15 days after receipt of the initial or tentative decision unless additional time is granted. A reply brief may be filed within 15 days after receipt of the appeal brief by the opposing party. The Judicial Officer has all powers of a presiding officer and is authorized to decide all issues *de novo.*

(b) Briefs upon appeal or in support of exceptions to a tentative decision by the Judicial Officer and replies thereto shall be filed in triplicate with the Recorder and contain the following matter in the order indicated:

(1) A subject index of the matters presented, with page references; a table of cases alphabetically arranged; a list of statutes and texts cited with page references.

(2) A concise abstract or statement of the case in briefs on appeal or in support of exceptions.

(3) Numbered exceptions to specific findings and conclusions of fact, conclusions of law, or recommended orders of the presiding officer in briefs on appeal or in support of exceptions.

(4) A concise argument clearly setting forth points of fact and of law relied upon in support of or in opposition to each exception taken, together with specific references to the parts of the record and the legal or other authorities relied upon.

§ 964.17 Final agency decision.

The Judicial Officer renders the final agency decision and order which will be served upon the parties and upon the postmaster at the office where the mail at issue is being held.

[52 FR 36763, Oct. 1, 1987, as amended at 53 FR 4849, Feb. 18, 1988]

§ 964.18 Compromise and informal disposition.

Nothing in these rules precludes the compromise, settlement, and informal disposition of proceedings initiated under these rules at any time prior to the issuance of the final agency decision.

§ 964.19 Orders.

If an order is issued by the Judicial Officer which prohibits delivery of mail to a Petitioner it shall be incorporated in the record of the proceeding. The Recorder shall cause notice of the order to be published in the *Postal Bulletin* and cause the order to be transmitted to such postmasters and other officers and employees of the Postal Service as may be required to place the order into effect.

[52 FR 36763, Oct. 1, 1987, as amended at 53 FR 4849, Feb. 18, 1988]

§ 964.20 Modification or revocation of orders.

A party against whom an order or orders have been issued may file an application for modification or revocation thereof. The Recorder shall transmit a copy of the application to the General Counsel, who shall file a written reply within 10 days after receipt or such other period as the Judicial Officer may fix. A copy of the reply shall be sent to the applicant by the Recorder. Thereafter an order granting or denying such application will be issued by the Judicial Officer.

§ 964.21 Official record.

The transcript of testimony together with all pleadings, orders, exhibits, briefs, and other documents filed in the proceeding constitute the official record of the proceeding.

§ 964.22 Public information.

The Law Librarian of the Postal Service maintains for public inspection in the Law Library copies of all initial, tentative, and final agency decisions and orders. The Recorder maintains the complete official record of every proceeding.

§ 964.23 Ex parte communications.

The provisions of 5 U.S.C. 551(14), 556(d), and 557(d) prohibiting ex parte communications are made applicable to proceedings under these rules of practice.

PART 965—RULES OF PRACTICE IN PROCEEDINGS RELATIVE TO MAIL DISPUTES

Sec.

965.1 Authority for rules.
965.2 Scope of rules.
965.3 Notice to parties.
965.4 Presiding officers.
965.5 Submittals by parties.
965.6 Comments by parties.
965.7 Default.
965.8 Hearings.
965.9 Evidence.
965.10 Transcript.
965.11 Initial decision.
965.12 Appeal.
965.13 Compromise and informal disposition.
965.14 Public information.

AUTHORITY: 39 U.S.C. 204, 401.

SOURCE: 52 FR 29012, Aug. 5, 1987, unless otherwise noted.

§ 965.1 Authority for rules.

These rules of practice are issued by the Judicial Officer of the U.S. Postal Service pursuant to authority delegated by the Postmaster General. (39 CFR 224.1(c)(4)).

§ 965.2 Scope of rules.

The rules in this part shall be applicable to mail dispute cases forwarded to the Judicial Officer Department by Regional Counsel pursuant to Domestic Mail Manual 153.72.

§ 965.3 Notice to parties.

Upon receipt of a mail dispute case from Regional Counsel, the Recorder, Judicial Officer Department, United States Postal Service, 475 L'Enfant Plaza West, SW., Washington, DC 20260-6100, will send a notice of docketing and submittal due date to the parties together with a copy of these rules.

§ 965.4 Presiding officers.

(a) The presiding officer shall be an Administrative Law Judge or an Administrative Judge qualified in accordance with law. The Judicial Officer assigns cases under this part. Judicial Officer includes Associate Judicial Officer upon delegation thereto. The Judicial Officer may, on his own initiative or for good cause found, preside at the reception of evidence.

(b) The presiding officer has authority to:

(1) Take such action as may be necessary to preside properly over the proceeding and render decision therein;

(2) Render an initial decision, if the presiding officer is not the Judicial Officer, which becomes the final agency decision unless a timely appeal is taken; the Judicial Officer may issue a tentative or a final decision.

§ 965.5 Submittals by parties.

Within 15 days after receipt of the Recorder's notice, each party shall file with the Recorder a sworn statement of the facts supporting its claim to receipt of the mail together with a copy of each document on which it relies in making such claim. All such submittals shall be in duplicate. Upon receipt of such evidence, the Recorder shall send a copy of each submittal to the opposing party.

§ 965.6 Comments by parties.

Within 10 days of receipt of the other party's evidence, each party may file with the Recorder a statement setting forth in detail its disagreements, if any, with its opponent's statement and documents. The Recorder will send to each party a copy of the other party's comments.

§ 965.7 Default.

A party who fails to file the submittal required by § 965.5 may be held in default and the presiding officer may issue an initial decision that mail be delivered to the other party.

§ 965.8 Hearings.

(a) In the discretion of the presiding officer an oral hearing may be granted at the request of either, or both, parties or on the presiding officer's own initiative if there is a dispute as to a material issue of fact which can only be resolved by examination of witnesses.

(b) Hearings are held at the headquarters of the U.S. Postal Service, 475 L'Enfant Plaza West, SW., Washington, DC, 20260-6100, or at such other place as may be designated by the presiding officer.

§ 965.9 Evidence.

(a) In general, admissibility will hinge on relevancy and materiality. However, relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

(b) Testimony shall be given under oath or affirmation and witnesses are subject to cross-examination.

(c) Agreed statements to fact are encouraged and may be received in evidence.

§ 965.10 Transcript.

Testimony and argument at hearings shall be reported verbatim, unless the presiding officer otherwise orders. Transcripts or copies of the proceedings are supplied to the parties at such rate as may be fixed by contract between the reporter and Postal Service.

§ 965.11 Initial decision.

The presiding officer shall render an initial decision in writing, based on the record, as expeditiously as possible, but to the extent practicable within 10 working days of closing of the record. The decision will be brief, containing summary findings of fact, conclusions of law, and reasons therefor. If there has been a hearing the presiding officer may in his discretion render an oral decision. A typed copy of such oral decision will subsequently be furnished to the parties to establish the date for commencement of time for requesting review of the initial decision.

§ 965.12 Appeal.

The initial or tentative decision will become final 10 days after its issuance and receipt by the parties unless the Judicial Officer, or by delegation the Associate Judicial Officer, in his sole discretion, grants review upon appeal of either party filed within that period, or on his own motion within that period. If an appeal is denied, the initial or tentative decision becomes the final agency decision on the issuance of such denial. The Judicial Officer's decision on appeal is the final agency decision with no further agency review or appeal rights.

§ 965.13 Compromise and informal disposition.

Nothing in these rules precludes the compromise, settlement, and informal disposition of proceedings initiated under these rules at any time prior to the issuance of the final agency decision.

§ 965.14 Public Information.

The Law Librarian of the Postal Service maintains for public inspection in the Law Library copies of all initial, tenatative, and final agency decisions and orders. The Recorder maintains the complete official record of every proceeding.

PART 966—RULES OF PRACTICE IN PROCEEDINGS RELATIVE TO ADMINISTRATIVE OFFSETS INITIATED BY THE POSTAL INSPECTION SERVICE

Sec.

966.1 Authority for rules.
966.2 Scope of rules.
966.3 Definitions.
966.4 Petition for a hearing and supplement to petition.
966.5 Effect of petition filing.

Sec.
966.6 Filing, docketing and serving documents; computation of time; representation of parties.
966.7 Answer to petition.
966.8 Hearing Official authority and responsibilities.
966.9 Opportunity for oral hearing.
966.10 Initial decision.
966.11 Appeal of initial or tentative decision to Judicial Officer.
966.12 Waiver of rights.
966.13 Ex parte communications.

AUTHORITY: 39 U.S.C. 204, 401, 2601.

SOURCE: 54 FR 15754, Apr. 19, 1989, unless otherwise noted.

§ 966.1 Authority for rules.

These rules of practice are issued by the Judicial Officer pursuant to authority delegated by the Postmaster General.

§ 966.2 Scope of rules.

The rules in this part apply to any petition filed by a former postal employee:

(a) To challenge the Postal Service's determination that he or she is liable for a debt based on a loss from the mails or from Postal Service revenues; and/or

(b) To challenge the administrative offset schedule proposed by the Postal Service for collecting any such debt.

§ 966.3 Definitions.

(a) "Administrative Offset" refers to the withholding of money payable by the Postal Service or the United States to, or held by the Postal Service or the United States for, a former employee in order to satisfy a debt determined to be owed by the former employee to the Postal Service.

(b) "Chief Postal Inspector" refers to the Chief Postal Inspector of the Inspection Service Department or his or her representative.

(c) "Debt" refers to any amount determined by the Postal Service to be owed to the Postal Service by a former employee as a result of a loss from the mails or from Postal Service revenues.

(d) "Former Employee" refers to an individual whose employment with the Postal Service has ceased. An employee is considered formally separated from the Postal Service rolls as of close of business on the effective date of his or her separation Postal Service Form 50.

(e) "Hearing Official" refers to an Administrative Law Judge qualified to hear cases under the Administrative Procedure Act, an Administrative Judge appointed under the Contract Disputes Act of 1978, or any other qualified person licensed to practice law designated by the Judicial Officer to preside over a hearing conducted pursuant to these regulations.

(f) "Inspection Service" refers to the Inspection Service Department of the Postal Service.

(g) "Judicial Officer" refers to the Judicial Officer, Associate Judicial Officer, or Acting Judicial Officer of the Postal Service.

(h) "Reconsideration" refers to the review of a debt conducted by the Inspection Service at the request of the former employee alleged to be responsible for such debt following the former employee's receipt of a written request for payment.

(i) "Recorder" refers to the Recorder, Judicial Officer Department, United States Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260-6100.

§ 966.4 Petition for a hearing and supplement to petition.

(a) A former employee, who is alleged to be responsible for a debt and who has previously requested and received reconsideration of the debt by the Inspection Service, may obtain review of:

(1) The Inspection Service's final determination of the existence or amount of the debt, or

(2) The administrative offset schedule proposed by the Inspection Service for collecting any such debt, by mailing, within thirty (30) calendar days of receiving written notice of the Inspection Service's determination upon reconsideration, a written, signed petition, requesting a written or oral hearing, to the Recorder, Judicial Officer Department, United States Postal Service, 475 L'Enfant Plaza, SW, Washington, DC 20260-6100.

A former employee must have previously requested the Inspection Service to reconsider the Postal Service's debt determination to be entitled to a hearing under this part.

(b) The petition must include the following:

(1) The words, "Petition for Review Under 39 CFR Part 966";

(2) The former employee's name and social security number;

(3) The former employee's home address and telephone number, and any other address and telephone number at which the former employee may be contacted about these proceedings;

(4) A statement of the date the former employee received the Inspection Service's final notice of debt determination and a copy of the notice;

(5) A statement indicating whether the former employee elects an oral hearing or a decision based solely on written submissions;

(6) If the former employee requests an oral hearing, a statement describing the evidence he or she will produce which makes an oral hearing necessary, including a list of witnesses, with their addresses, whom the former employee expects to call; a summary of the testimony the witnesses are expected to present; the city requested for the hearing site, with justification for holding the hearing in that city; and at least three proposed dates for the hearing at least forty-five (45) days after the filing of the petition for review;

(7) A statement of the grounds upon which the former employee objects to the Postal Service's determination of the debt or to the administrative offset schedule proposed by the Postal Service for collecting any such debt. This statement should identify with reasonable specificity and brevity the facts, evidence, and legal arguments, if any, which support the former employee's position; and

(8) Copies of all records in the former employee's possession which relate to the debt and which the former employee may enter into the record of the hearing.

(c) The former employee may, if necessary, file with the Recorder additional information as a supplement to the petition at any time prior to the filing of the answer to the petition under § 966.7, or at such later time as permitted by the Hearing Official upon a showing of good cause.

§ 966.5 Effect of petition filing.

Upon receipt and docketing of the former employee's petition, the Recorder will notify the Chief Postal Inspector that the petition has been filed and that a timely filed petition stays further collection action.

§ 966.6 Filing, docketing and serving documents; computation of time; representation of parties.

(a) *Filing.* All documents required under this part must be filed by the former employee or the Chief Postal Inspector in triplicate with the Recorder. (Normal Recorder office business hours are between 8:15 a.m. and 4:45 p.m., eastern standard or daylight saving time as appropriate during the year.) The Recorder will transmit a copy of each document filed to the other party, and the original to the Hearing Official.

(b) *Docketing.* The Recorder will maintain a docket record of proceedings under this part and will assign each petition a docket number. After notification of the docket number, the former employee and Chief Postal Inspector should refer to it on any further filings regarding the petition.

(c) *Time computation.* A filing period under the rules in this part excludes the day the period begins, and includes the last day of the period unless the last day is a Saturday, Sunday, or legal holiday, in which event the period runs until the close of business on the next business day.

(d) *Representation of parties.* After the filing of the petition, further document transmittals for, or communications with, the Postal Service shall be through its representative, the Chief Postal Inspector. If a former employee is represented by an attorney authorized to practice law in any of the United States or the District of Columbia or a territory of the United States, further transmissions of documents and other communications with the former employee shall be made through his or her attorney rather than directly with the former employee.

§ 966.7 Answer to petition.

Within thirty (30) days from notice of the petition, the Chief Postal Inspector shall file an answer to the petition, and attach all available relevant records and documents in support of the Postal Service's claim, or the administrative offset schedule proposed by the Postal Service for collecting any such claim; a list of witnesses the Postal Service intends to call if an oral hearing is requested and the request is granted; a synopsis of the testimony of each witness; a statement of concurrence or objection to the proposed location and dates for the oral hearing; and a statement of the basis for the determination of debt or offset schedule if not contained in the relevant records or documents. If the former employee files a supplement to the petition, the Chief Postal Inspector may file any supplemental answer and records to support the position of the Postal Service within twenty (20) calendar days from the date of receipt of the supplement filed with the Recorder.

§ 966.8 Hearing Official authority and responsibilities.

In conducting a hearing under this part, the Hearing Official's authority includes, but is not limited to, the following:

(a) Ruling on all offers, motions, or requests by the parties;

(b) Issuing any notices, orders, or memoranda to the parties concerning the hearing procedures;

(c) Conducting telephone conferences with the parties to expedite the proceedings (a memorandum of a telephone conference will be transmitted to both parties);

(d) Determining if an oral hearing is necessary and setting the place, date, and time for such hearing;

(e) Administering oaths or affirmations to witnesses;

(f) Conducting the hearing in a manner to maintain discipline and decorum while assuring that relevant, reliable and probative evidence is elicited on the issues in dispute, and that irrelevant, immaterial or repetitious evidence is excluded;

(g) Establishing the record in the case;

(h) Issuing an initial decision or one on remand; and

(i) Granting, at the request of eithe party, reasonable time extensions.

§ 966.9 Opportunity for oral hearing.

An oral hearing generally will b held only in those cases which, in the opinion of the Hearing Official cannot be resolved by a review of the documentary evidence, such as whe the existence, or amount, of a deb turns on issues of credibility or verac ty. When the Hearing Official determines that an oral hearing is not ne essary, the decision shall be based solely on written submissions.

§ 966.10 Initial decision.

(a) After the receipt of written su missions or after the conclusion of th hearing and the receipt of any pos hearing briefs, the Hearing Officia shall issue a written initial decisio including findings of fact and concl sions of law, which the Hearing Offi cial relied upon in determining wheth er the former employee is indebted t the Postal Service, or in upholding o revising the administrative offse schedule proposed by the Postal Serv ice for collecting a former employee debt. When the Judicial Officer pre sides at a hearing he or she shall issu a final or a tentative decision. The ini tial or tentative decision shall becom the final agency decision unless appea is taken pursuant to § 966.11.

(b) The Hearing Official shal promptly send to each party a copy o the initial or tentative decision, and a statement describing the right t appeal to the Judicial Officer in ac cordance with § 966.11.

(c) Unless the former employee o Chief Postal Inspector appeals th Hearing Official's initial or tentativ decision within thirty (30) days fro receipt of the decision, such decisio shall become the final agency decisio and an order to that effect will b issued by the Judicial Officer.

§ 966.11 Appeal of initial or tentative de sion to Judicial Officer.

(a) *Notice of appeal and supporti brief.* (1) A former employee or th Chief Postal Inspector may appeal a adverse decision by a Hearing Official by filing a Notice of Appeal with the Recorder within thirty (30) days after receipt of the decision. The Judicial Officer may extend the filing period upon written application of either party for good cause shown.

(2) The Notice of Appeal must be accompanied by a written brief specifying exceptions to findings of fact and conclusions of law, and any reasons for such exceptions, to the Hearing Official's decision.

(3) No later than thirty (30) days after receiving the Notice of Appeal and accompanying brief, the opposing party may file a response with the Recorder.

(b) *Form of review.* (1) Review by the Judicial Officer will be based on the entire record and written submissions.

(2) Objections or new issues not raised in the hearing will not be considered unless the interested party demonstrates that the failure to raise the objection or issue before the Hearing Official was caused by extraordinary circumstances.

(3) The Judicial Officer shall have all powers of a Hearing Official and on appeal may order the hearing reopened for the presentation of additional evidence or, in his or her discretion, remand the case to the Hearing Official for further action.

(c) *Decision of Judicial Officer.* The Judicial Officer shall affirm, reverse, or modify any decision appealed under this section and shall promptly serve each party to the appeal with a copy of this or her decision and a statement that such decision constitutes the final agency decision.

§ 966.12 Waiver of rights.

The Hearing Official may determine the former employee has waived his or her right to a hearing and administrative offset may be initiated if the former employee:

(a) Files a petition for hearing after the end of the prescribed thirty (30) day period, and fails to demonstrate to the satisfaction of the Hearing Official good cause for the delay;

(b) Has received notice to appear at an oral hearing but fails to do so without showing circumstances beyond the former employee's control;

(c) Fails to file required submissions or to comply with orders of the Hearing Official; or

(d) Files a withdrawal of his or her petition for a hearing with the Recorder.

§ 966.13 Ex parte communications.

Ex parte communications between a Hearing Official or his or her staff and a party shall not be made. This prohibition does not apply to procedural matters. A memorandum of any such procedural communication will be transmitted to both parties.

CHAPTER III—POSTAL RATE COMMISSION

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SUBCHAPTER A—PERSONNEL

PART 3000—STANDARDS OF CONDUCT

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3000.735-502 Public record of ex par communications.
APPENDIX A—CODE OF ETHICS FOR GOVERN MENT SERVICE

AUTHORITY: E.O. 11222 of May 8, 19 CFR 1964-1965 Comp., p. 306; E.O. 1157 Nov. 24, 1970, 35 FR 18163; and 5 CFR Pa 735.

SOURCE: 36 FR 5412, Mar. 23, 1971, unle otherwise noted.

Subpart A—Policy and Purpose

§ 3000.735–101 Policy.

The Postal Reorganization Act a
signs to the Postal Rate Commissio
the responsibility of holding fair a
impartial public hearings, consiste
with the requirements of the Admini
trative Procedure Act, and of maki
recommended decisions based on su
hearings, as to postal rates, fees f
postal services, and the classificati
of mail. Essential to the performan
of the functions of the Postal Ra
Commission and the U.S. Postal Ser
ice in the establishment of such rate
fees, and classifications under t
Postal Reorganization Act, is the co
fidence of the American public in t
honesty and integrity of the Comm
sioners and employees of the Pos
Rate Commission. Their personal co
duct must at all times be unquestio
ably free from taint or suspicion
partiality, favoritism, or any indicia
conflicting interests. Compliance w
the legal requirements of procedu
fairness in the conduct of the pub
hearings will not be sufficient to ma
tain public confidence in the rate-s
ting machinery authorized by t
Postal Reorganization Act if dou
exist as to the personal conduct sta
ards of the individuals who hold t
hearings, and make recommended
cisions based thereon, and their

ployees. It is, accordingly, the policy that the Commissioners and employees of the Commission shall at all times maintain the highest standards of official and personal conduct and shall scrupulously avoid every situation which may result in an actual or apparent loss of the complete independence and impartiality which is essential to command the respect and confidence of the American public. By reason of the particular trust imposed on the Commissioners and employees of the Postal Rate Commission they have a positive obligation to inform themselves of the policy in this section and the standards of conduct in this Part 3000 and to live within the letter and spirit of that policy and those standards.

§ 3000.735-102 Purpose.

(a) This Part 3000 sets forth the standards of conduct required of Commissioners, employees, and special Government employees of the Postal Rate Commission. In addition, the standards of conduct in this part are applicable to members of the uniformed services and employees of other Government agencies who are serving on assignment or detail in the Postal Rate Commission, but the applicability of this part to such members and employees does not relieve them of their responsibilities under the regulations of the service or agency from which they were assigned or detailed.

(b) This part reflects prohibitions and requirements imposed by the laws of the United States. However, the paraphrased restatements of the laws contained in this part are designed for informational purposes only and in no way constitute an interpretation or construction thereof that is binding on the Government. Moreover, this part does not purport to paraphrase or enumerate all restrictions and requirements imposed by law, Executive order, regulation, or otherwise upon Federal officers and employees and former Federal officers and employees. The omission of a reference to any such restriction or requirement in no way alters the legal effect of that restriction or requirement and any such restriction or requirement continues to be applicable to officers and employees and former officers and employees in accordance with its terms. Furthermore, attorneys employed by the Postal Rate Commission are subject to the Code of Professional Responsibility of the American Bar Association.

Subpart B—General Provisions

§ 3000.735-201 Definitions.

In this part:

(a) "Commission" means the Postal Rate Commission.

(b) "Commissioner" means a Commissioner of the Postal Rate Commission, including the Chairman of the Commission.

(c) "Employee" or "regular employee" means an employee of the Commission, including a Commissioner of the Commission, but does not include a special Government employee.

(d) "Special Government employee" means an individual who is retained, designated, appointed, or employed by the Commission to perform with or without compensation, for not to exceed 130 days during any period of 365 consecutive days, temporary duties, either on a full-time or intermittent basis.

(e) "Person" means an individual, a corporation, a company, an association, a firm, a partnership, a society, a joint stock company, or any other organization or institution.

(f) "Counselor" or "Designated Agency Official" means, as appropriate, the official of the Commission designated in § 3000.735-203 to carry out the responsibilities referred to in that section, § 735.105(a) of the regulations of the Civil Service Commission (5 CFR 735.105(a)) and Title II of the Ethics in Government Act of 1978, Pub. L. 95-521, (92 Stat. 1836).

(g) "U.S. Postal Service" or "Postal Service" means the U.S. Postal Service established under Title 39, U.S.C., by the Postal Reorganization Act, Pub. L. 91-375, 84 Stat. 719, and, prior to the effective date of the commencement of operations by the U.S. Postal Service, means the Post Office Department.

(h) "Uniformed services" has the meaning given that term by 5 U.S.C. 2101.

[36 FR 5412, Mar. 23, 1971, as amended at 44 FR 27658, May 11, 1979]

§ 3000.735-202 Special Government employees; applicability of part.

Except where specifically provided otherwise, or where limited in terms or by the context to regular employees, all provisions of this Part relating to employees are applicable also to special Government employees.

§ 3000.735-203 Counseling and advisory services.

(a) The General Counsel of the Commission is the Counselor for the Commission. The Counselor shall advise employees as to the applicability and interpretation of this part, and laws and regulations referred to in this part, to factual situations for the purpose of aiding employees in avoiding conflicts of interest situations or acts or conduct that may reflect adversely on the Commission. The Counselor shall serve as the Commission's liaison with the Civil Service Commission on matters covered by this part and on related laws and regulations.

(b) Communications between the Counselor and an employee shall be confidential and used only for the purpose of this part, except as determined by the Chairman of the Commission.

(c) The Counselor shall notify all employees and special Government employees of the availability of counseling services, and of how and where such services are available. Such notification shall be made within 30 days after the effective date of this part and periodically thereafter. In the case of a new employee or special Government employee appointed after the date of such notification, notification shall be given at the time of his entrance on duty.

(d) The Counselor shall have copies of this part distributed to each employee and special Government employee within 30 days after the effective date thereof. In the case of a new employee or special Government employee entering on duty after the date of such distribution, a copy shall be furnished at the time of his entrance on duty.

(e) The Counselor shall maintain copies of Executive Orders 11222 and 11570, applicable regulations of the Civil Service Commission, the statutes referred to in this Part, and necessary explanatory materials including Part 735 of the Federal Personnel Manual for examination by employees and special Government employees during regular business hours.

§ 3000.735-204 Responsibilities of employees.

(a) Each employee and special Government employee has a positive obligation to read and become familiar with this part and with House Concurrent Resolution 175, 85th Congress, second session, 72 Stat. B12, the "Code of Ethics for Government Service," which is attached to this part as Appendix A.

(b) An employee or special Government employee who is uncertain as to the application of any regulation in this part, or of any provision of law, to any particular situation in which he is or may be involved, is obligated to contact the Counselor for advice and guidance. If an employee or special Government employee believes that the application of any regulation in this part, or any provision of law, will cause him undue hardship, he should consult the Counselor as to the possibility of obtaining a waiver of other relief under § 3000.735-302(f) or § 3000.735-304.

(c) An employee or special Government employee shall report immediately to the Counselor (1) any instance in which a person either within or outside the Commission uses or attempts to use a bribe, undue influence, or coercion to induce or attempt to induce the employee to act or neglect to act in regard to his official responsibilities, and (2) any information that causes him to believe that there has been a violation of a Federal criminal statute, the regulations in this part, or any law or regulation directly or indirectly related to the responsibilities of the Commission. A report made under this paragraph shall be prepared in triplicate and a copy shall be sent by the employee or special Government employee to (i) the Attorney General, Department of Justice, Washington, DC 20530, and (ii) to the Chairman, Civil Service Commission, Washington, DC 20415. The report shall be sent in a sealed envelope clearly marked "Administratively Confidential—To Be Opened by Addressee Only".

§ 3000.735-205 Disciplinary action.

(a) A violation of any provision of this Part by an employee or special Government employee may be cause for appropriate disciplinary action which may be in addition to any penalties prescribed by law. (As to other remedial action in cases where an employee's or special Government employee's financial interests result in a conflict or apparent conflict of interest, see § 3000.735-405(b).)

(b) Any disciplinary or remedial action taken pursuant to this part shall be effected in accordance with applicable laws, Executive orders, and regulations.

Subpart C—Conflicts of Interest and Ethical Conduct

§ 3000.735-301 Conflicts of interest.

(a) A criminal conflict of interest may exist when an employee, his spouse, minor child, partner, or person with whom he is associated or is negotiating for future employment, has a personal, private, or financial interest in a matter that involves his official duties or responsibilities.

(b) The maintenance of public confidence in the Commission clearly demands that an employee take no action which would constitute the use of his official position to advance his personal or private interests or those of his spouse, minor child, or person with whom he is associated or is negotiating for future employment. It is equally important that each employee avoid becoming involved in situations which present the possibility, or even the appearance, that his official position might be used to the private advantage of himself, his spouse, minor child, or person with whom he is associated or is negotiating for future employment.

(c) Neither the pertinent statutes nor the standards of conduct prescribed in this part are to be regarded as entirely comprehensive. Each employee must, in each instance involving a personal or private interest in a matter which also involves his duties and responsibilities as an employee, make certain that his actions do not have the effect or the appearance of the use of his official position for the furtherance of his own interests or those of his family or a person with whom he is associated or is negotiating for future employment. An employee should never act on an official matter for the Commission when there exists a personal interest incompatible with the unbiased exercise of official judgment.

(d) The principal statutory provisions relating to bribery, graft, and conflicts of interest are contained in 18 U.S.C. 201-224. Severe penalties are provided for violations, including, variously, fine, imprisonment, dismissal from office, voiding transactions, and disqualification from holding any office of honor, trust, or profit under the United States.

(e) Employees shall at all times, in both their official and private lives, conduct themselves so as to exemplify the highest standards of integrity. An employee shall avoid any action, whether or not specifically prohibited by law or regulation including this part, which might result in, or create the appearance of:

(1) Using public office for private gain;

(2) Giving preferential treatment to any person;

(3) Impeding Government efficiency or economy;

(4) Losing complete independence or impartiality;

(5) Making a Commission decision outside official channels; or

(6) Affecting adversely the confidence of the public in the integrity of the Commission.

§ 3000.735-302 Financial interests.

(a) An employee shall not, either directly or indirectly, have any financial interest (whether by ownership of any stock, bond, security, or other obligation or otherwise) in any entity or person whose interests may be significantly affected by rates of postage, fees for postal services, the classification of mail, or the operation of the Postal Service; but this paragraph does not proscribe interests in an entity or person whose use of the mails is merely an incidental or minor factor in the general conduct of its business.

(b) An employee shall not participate personally and substantially as a Government employee in a particular matter in which, to his knowledge, he has a financial interest (18 U.S.C. 208(a)), except as provided in paragraph (f) of this section.

(c) For the purposes of this section:

(1) An employee participates personally and substantially in a particular matter through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise;

(2) A particular matter is a judicial or other proceeding, application, request for ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter; and

(3) A financial interest includes the financial interest of the employee himself or of his spouse, minor child, partner, organization in which he is serving as officer, director, trustee, partner, or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment.

(d) An employee may not have financial interests which:

(1) Establish a substantial personal or private interest in a particular matter which involves his duties and responsibilities as an employee, except as provided in paragraph (f) of this section or § 3000.735-304; or

(2) Are entered into in reliance upon, or as a result of, information obtained through his employment; or

(3) Result from active and continuous trading (as distinguished from the making of bona fide investments) which is conducted on such a scale as to interfere with the proper performance of his duties or as to create the appearance of speculative dealings. Frequency of trading, the use of credit, and particularly transactions to take advantage of short-term price fluctuations, are significant indications of speculative dealings.

(e) Aside from the restrictions prescribed or cited in this part, employees are free to engage in lawful financial transactions to the same extent as private citizens. Employees should be aware that the financial interests of their wives or minor children and blood relatives who are full-time residents of their households, and interest of partners or a person or entity with whom they are associated or are negotiating for future employment, may be regarded, for the purpose of this section, as financial interests of the employees themselves.

(f) An employee who has a financial interest in a particular matter which is within the scope of his official duties shall make a full disclosure of that interest to the Counselor in writing. He shall not participate in such matter unless and until he receives a written determination by the Chairman of the Commission pursuant to section 208(b)(1) of Title 18, U.S.C., that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect of him. If the Chairman of the Commission does not make such a determination, he shall direct such remedial action as may be appropriate under the provisions of § 3000.735-405(b).

(g) This section does not apply to special Government employees, who are subject to the provisions of § 3000.735-314.

(h) The Chairman from time to time determines the appropriate maximum limit for an interest in any one entity or person. An employee may not maintain an interest above that limit unless he or she receives a written determination by the Chairman pursuant to section 208(b)(1) of Title 18, U.S.C., that the interest is not so substantial as to be deemed likely to affect the integrity of the service which the Government may expect of him or her.

[36 FR 5412, Mar.23,1971, as amended at 51 FR 5069, Feb. 11, 1986]

§ 3000.735-303 Additional prohibitions—regular employees.

(a) In addition to the disqualifications described in § 3000.735-302, a regular employee is subject to the following major prohibitions.

(1) He may not, except in the discharge of his official duties, represent anyone else before a court or Government agency in a matter in which the United States is a party or has an interest. This prohibition applies both to paid and unpaid representation of another (18 U.S.C. 203 and 205).

(2) He may not, after his Government employment has ended, represent anyone other than the United States in connection with a matter in which the United States is a party or has an interest and in which he participated personally and substantially for the Government (18 U.S.C. 207(a)).

(3) He may not, for one year after his Government employment has ended, represent anyone other than the United States in connection with a matter in which the United States is a party or has an interest and which was within the boundaries of his official responsibility during the last year of his Government service (18 U.S.C. 207(b)). (This temporary restraint is permanent if the matter is one in which he participated personally and substantially. See paragraph (a)(2) of this section.)

(4) He may not receive any salary, or supplementation of his Government salary, from a private source as compensation for his services to the Government (18 U.S.C. 209). (See § 3000.735-305.)

(b) Exemptions or exceptions from the prohibitions described in paragraph (a) of this section are permitted under certain circumstances. For the method of obtaining such exemptions or exceptions, see § 3000.735-304.

§ 3000.735-304 Exemptions and exceptions from prohibitions of conflict of interest statutes.

(a) Nothing in this part prohibits an employee, if it is not otherwise inconsistent with the faithful performance of his duties, from acting without compensation as agent or attorney for any personn a disciplinary, loyalty, or other Federal personnel administration proceeding involving such person.

(b) Nothing in this part prohibits an employee from acting, with or without compensation, as agent or attorney for his parents, spouse, child, or any person for whom, or for any estate for which, he is serving as guardian, executor, administrator, trustee, or other personal fiduciary, except in those matters in which he has participated personally and substantially as a Government employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or which are the subject of his official responsibility, as defined in section 202(b) of Title 18 of the U.S.C., provided the Chairman of the Commission approves.

(c) Nothing in this part prohibits an employee from giving testimony under oath or from making statements required to be made under penalty for perjury or contempt.

(d) In addition to the exemptions and exceptions described in this section and in § 3000.735-302(e), the conflict of interest statutes permit certain exemptions and exceptions in specific circumstances. The procedure for effecting such exemptions or exceptions is as follows:

(1) Any regular employee or special Government employee who desires approval or certification of his activities as provided for by section 205 of Title 18, U.S.C., shall make application therefor in writing to the Counselor.

(2) A former employee, including a former special Government employee, who desires certification with regard to his activities under section 207 of Title 18, U.S.C., shall make application therefor in writing to the Counselor.

(3) The Counselor shall report promptly to the Chairman of the Commission and the Chairman of the Civil Service Commission all matters reported to him under this part which require consideration of approvals, certifications, or determinations provided for in section 205, 207, or 208 of Title 18, U.S.C.

§ 3000.735-305 Salary payable only by United States.

(a) No employee, other than a special Government employee or an employee serving without compensation, shall receive any salary, or any contribution to or supplementation of salary, as compensation for his services as an employee, from any source other than the Government of the United States, except as may be contributed out of the treasury of any State, county, or municipality (18 U.S.C. 209).

(b) Nothing in this section prohibits an employee from continuing to participate in a bona fide pension, retirement, group life, health, or accident insurance, profit-sharing, stock bonus, or other employee welfare or benefit plan maintained by a former employer, nor from accepting contributions, awards, or other expenses under Chapter 41 of Title 5, U.S.C., relating to employee training.

§ 3000.735-306 Gifts, entertainment, and favors.

(a) Except as provided in paragraphs (b) and (c) of this section, an employee shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, honorarium, travel or accommodation expense or the like, loan, or any other thing of value from a person who:

(1) Has, or is seeking to obtain, contractual or other business of financial relations with the Commission or the Postal Service;

(2) Conducts operations or activities which are regulated or controlled by the Commission; or

(3) Has interests which may be substantially affected by the performance or nonperformance of his official duty or the duties and responsibilities of the Commission.

(b) Notwithstanding paragraph (a) of this section, an employee may:

(1) Accept a gift, gratuity, favor, entertainment, honorarium, travel or accommodation expense or the like, loan, or other thing of value from a close personal friend, parent, spouse, child, or other close relative when the circumstances make it clear that the family or personal relationships involved are the motivating factors; and

(2) Participate (together with his wife or a member of his immediate family) as a guest speaker at a conference or convention or as a guest in an inaugural flight, a ship launching, or similar event, and accept meals, accommodations, and entertainment incidental thereto, provided there is no reasonable way to ascertain the cost thereof and the invitation is addressed to the Chairman of the Commission and the employee is selected for such participation by the Chairman after a determination that his participation is in the interest of the Commission and the Government.

(3) Accept unsolicited advertising or promotional items such as a pen, pencil, note pad, or calendar of nominal value not in excess of $2 per item.

(c) In an instance in which an employee, due to circumstances beyond his control, cannot graciously and without undue embarrassment decline food or refreshment at a meeting or gathering where he is properly in attendance as a part of his official responsibilities, he shall, within 48 hours thereafter, submit a written report to the Counselor concerning the matter with a description of the incident and an explanation as to why declination was not reasonable. The Counselor shall personally review each report submitted under this paragraph and when the acceptance of the food or refreshment was not justified, or when such acceptances by one particular employee are frequent, the Counselor shall submit a written report on the matter to the Chairman of the Commission and the Chairman of the Civil Service Commission with a recommendation for corrective action.

(d) A gift to or from an official superior or a subordinate fellow employee is prohibited by 5 U.S.C. 7351. However, this provision does not prohibit a voluntary gift of nominal value or a donation in a nominal amount made on a special occasion such as marriage, illness, or retirement.

(e) A gift or gratuity, the receipt of which is prohibited by paragraph (a) of this section shall be returned to the donor with a written explanation why the return is necessary. A copy of the written explanation shall be submitted to the Counselor for filing in the employee's Official Personnel Folder. When return of a gift is not possible, the gift or gratuity shall be submitted to the Counselor with a written explanation why the return is not feasible. The Counselor shall turn the gift or gratuity over to a public or private charity or charitable institution and make a record of its disposition.

(f) The Constitution (Art. 1, sec. 9, par. 8) prohibits an employee's acceptance from a foreign government, except with the consent of Congress, of any emolument, office, or title. The Congress has provided for the receipt and disposition of foreign gifts and decorations in 5 U.S.C. 7342 which applies to each employee by reason of 39 U.S.C. 410 and 3604(d). See also Executive Order 11320, 31 FR 15789, and the regulations pursuant thereto in 22 CFR Part 3 (as added, 32 FR 6569). Any such gift or thing which cannot appropriately be refused shall be submitted to the Counselor for transmittal to the State Department.

§ 3000.735-307 Outside employment and other activity.

(a) No employee who is exempt from the provisions of the Fair Labor Standards Act shall engage in any outside professional practice or professional activity, either on a paid or unpaid basis, other than:

(1) Teaching, lecturing, or writing as provided in paragraph (e) of this section;

(2) outside professional practice with or for a recognized organization which furnishes professional representation or services on a *pro bono publico* basis.

(b) An activity not prohibited by this rule, or an activity permitted by paragraph (a)(1) or (2) of this section, shall not be conducted on Commission time or with the use of Commission time or with the use of Commission equipment and facilities or with the assistance of other Commission personnel. The prohibition against assistance of other Commission personnel does not apply to two or more employees independently engaging in a common outside employment or activity.

(c) An employee shall not engage in outside employment or professional practice, either on a paid or unpaid basis, with or for a person whose business or other interests (1) are substantially dependent on, or may be significantly affected by, postal rates, fees, or classifications, or (2) are substantially dependent on providing property, a product, or service to, or for use in connection with, the Postal Service. The proscription in this paragraph applies whether the employee is employed by or associated with another person or is in business or practice by himself.

(d) An employee shall not engage in outside employment or other outside activity not clearly compatible with the full and proper discharge of the duties and responsibilities of his employment with the Commission. Incompatible activities, include, but are not limited to:

(1) Acceptance of a fee, compensation, gift, payment of expense, or any other thing of value in circumstances in which acceptance may result in, or create the appearance of, a conflict of interest, including the receipt of any thing of value for the sale or leasing of real or personal property to the Commission or the Postal Service or for service as a consultant to a contractor or other person who has, or who the employee knows is apt to have, business with the Commission or the Postal Service;

(2) Outside employment which tends to impair the employee's mental or physical capacity for, or which otherwise interferes with performance of his or her Commission duties and responsibilities in an acceptable manner;

(3) Outside employment or activity that is likely to result in criticism of, or cause embarrassment to, the Commission;

(4) Contracting with the Government either directly or through an organization controlled or directed by Government employees, except when advance, express, written permission is obtained from the Counselor on the basis of a finding that the case is exceptional in that the needs of the Government cannot reasonably be otherwise obtained (see 41 CFR 1-1.302-3);

(5) Outside employment or activity including the endorsement of a commercial or business product, which involves the use or exploitation of the employee's official title, role, position,

or authority, or the use of Government resources such as space, personnel, supplies, equipment, or vehicles; or

(6) Outside employment or activity involving Federal taxes if the work on such taxes extends beyond the mere preparation of a tax return or the furnishing of information to the Internal Revenue Service obtained solely from the records of a taxpayer. An employee shall not become involved either directly or indirectly in advocating a taxpayer's position, other than his own or that of his spouse.

(e) Within the limitations imposed by this section, employees are encouraged to engage in teaching, lecturing, and writing. However, an employee shall not, either on a paid or unpaid basis, engage in teaching, lecturing, or writing, including teaching, lecturing, or writing for the purpose of the special preparation of a person or class of persons for an examination of the Civil Service Commission or Board of Examiners for the Foreign Service, or for appointment in the U.S. Postal Service or the Commission, that is dependent on information obtained as a result of his employment with the Commission, except when that information has been made available to the general public or will be made available on request, or when the Counselor gives written authorization for the use of nonpublic information on the basis that the use is in the public interest. In addition, a Commissioner shall not receive compensation or anything of monetary value for any consultation, lecture discussion, writing, or appearance the subject matter of which is devoted substantially to the responsibilities, programs, or operations of the Commission or the U.S. Postal Service, or which draws substantially on official data or ideas which have not become part of the body of public information.

(f) Neither this section nor § 3000.735-306 precludes an employee from:

(1) Receipt of bona fide reimbursement, unless prohibited by law or given under conditions that would compromise or appear to compromise the integrity of the employee or the Commission, for actual expenses for travel and such other necessary subsistence as is compatible with this Part and for which no Government payment or reimbursement is made. However, an employee may not be reimbursed, and payment may not be made on his behalf, for excessive personal living expenses, gifts, entertainment, or other personal benefits, nor may an employee be reimbursed by a person for travel on official business under agency orders when reimbursement is proscribed by Decision B-128527 of the Comptroller General, 46 Comp. Gen. 689. (See § 3000.735-313(q) regarding reimbursement by a private foundation.) When an employee travels on official business he should use commercial transportation at Government expense and not accept free transportation from any person. In the event commercial transportation is not reasonably available for the needed travel, an employee may accept private transportation provided the person providing such transportation is reimbursed therefor at the standard commercial rate.

(2) Participation in the activities of national or State political parties not proscribed by law.

(3) Participation, other than as an officer at a national, statewide, regional, or comparable responsible level, in the affairs of, or acceptance of an award for a meritorious public contribution or achievement given by, a charitable, religious, professional, social, fraternal, nonprofit educational or recreational, public service, or civic organization. However, an employee may accept an award from an organization described in this paragraph only when the Counselor determines in advance of the acceptance of the award that the award is in no way related to the employee's services with the Commission.

(g) An employee who wishes to engage in outside employment or activity, including teaching, lecturing, writing, or serving as an officer at a national, statewide, regional, or other responsible level of an organization described in paragraph (e)(3) of this section, shall obtain the prior written approval of the Counselor. A request for such approval shall be submitted to the Counselor in writing with sufficient description of the employment or activity to enable him or her to make an informed determination as to whether a conflict of interest or the appearance of a conflict of interest may be involved. A record of approval or disapproval made under this paragraph shall be filed in the employee's Official Personnel Folder. As a matter of general policy, outside or private professional work or practice (e.g., legal or accounting activities), except as permitted in paragraph (a) of this section, by employees is discouraged and only in unusual circumstances will it be approved.

(h) The Commission may employ a person on extended leave of absence from a private employer when that is the way most advantageous to the Commission to obtain a needed, highly-qualified employee. When it is proposed to employ such a person, a written statement of the exact conditions of the leave of absence shall be submitted to the Counselor for an advanced determination as to employability in the light of the conflicts of interest statutes and this part. If employed, such an employee shall not be allowed to handle or have access to, either directly or indirectly, confidential business data of the private employer's competitors. The necessity for the continued employment of such an employee shall be reviewed annually by the Counselor.

(i) An employee who discusses or negotiates for outside employment with any person which has business or other interests of the type described in paragraph (b) of this section, shall report that discussion or negotiation to the Counselor within 24 hours after the discussion or negotiation.

(j) This section does not apply to special Government employees who are subject to the provisions of § 3000.735-315.

(E.O. 11222 of May 8, 1965, 3 CFR 1964-1965 Comp., p. 306; E.O. 11570 of Nov. 24, 1970, 35 FR 18183; and 5 CFR Part 735, 39 U.S.C. 3603)

[36 FR 5412, Mar. 23, 1971, as amended at 46 FR 42064, Aug. 19, 1981; 47 FR 19132, May 4, 1982]

§ 3000.735-308 Use of Government services and property.

An employee shall not directly or indirectly use, or allow the use of, Government services or property of any kind, including property leased to the Government, for other than officially approved activities. An employee has a positive duty to protect and conserve Government property including equipment, supplies, and other property entrusted or issued to him.

§ 3000.735-309 Misuse of official information.

(a) An employee shall not, particularly for the purpose of furthering a private interest, directly or indirectly use, or allow the use of, official information obtained through or in connection with his Government employment which has not been made available to the general public, except as provided in § 3000.735-307(e) relating to teaching, lecturing, and writing.

(b) An employee shall not divulge restricted official information outside the Commission, except as permitted under the instructions pertaining thereto and at the time authorized for its release.

(E.O. 11222 of May 8, 1965, 3 CFR 1964-1965 Comp., p. 306; E.O. 11570 of Nov. 24, 1970, 35 FR 18183; and 5 CFR Part 735, 39 U.S.C. 3603)

[36 FR 5412, Mar. 23, 1971, as amended at 47 FR 19133, May 4, 1982]

§ 3000.735-310 Indebtedness.

An employee shall pay each just financial obligation in a proper and timely manner, especially one imposed by law such as Federal, State, or local taxes. For the purpose of this section, a "just financial obligation" means one acknowledged by the employee, or reduced to judgment by a court, and "in a proper and timely manner" means in a manner which the Commission determines does not, under the circumstances, reflect adversely on the Commission as his employer. In the event of dispute between an employee and an alleged creditor, this section does not require the Commission to determine the validity or amount of the disputed debt.

§ 3000.735-311 Gambling, betting, and lotteries.

An employee shall not participate, while on Government-owned or leased property or while on duty for the Commission, in any gambling activity, including the operation of a gambling device, in conducting a lottery or pool, in a game for money or property, or in selling or purchasing a numbers slip or ticket.

§ 3000.735-312 General standards of conduct; prejudicial conduct.

(a) An employee shall conduct himself on the job in such a manner that the work of the Commission is efficiently accomplished and courtesy, consideration, and promptness are observed in dealings with the Congress, the public, and other governmental agencies.

(b) An employee shall conduct himself off the job in such a manner as not to reflect adversely on the Commission or the Federal service.

(c) An employee, whether on or off the job, shall not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, or other conduct prejudicial to the Commission or the Federal service.

(d) An employee shall not, other than as required by his official duties, recommend or suggest the use of any non-governmental person offering services as an intermediary, consultant, agent, attorney, expediter, specialist, or the like for the purpose of assisting in any negotiations, transactions, or other business with the Commission or the U.S. Postal Service. Acceptance of a forwarding or finder's fee from such a person is deemed to be within the prohibition in this subsection.

(e) Discrimination on the basis of race, color, religion, sex, or national origin is conduct prejudicial to the Government. An employee, while acting in his official capacity, shall not directly or indirectly authorize, permit, or participate in any action, event, or course of conduct which subjects any person to discrimination, or results in any person being discriminated against, on the basis of race, color, religion, sex, or national origin.

§ 3000.735-313 Miscellaneous statutory provisions.

Each employee shall acquaint himself with each statute that relates to his ethical and other conduct as an employee of the Commission and of the Government. In particular, attention of employees is directed to the following statutory prohibitions which are applicable to employees of the Commission:

(a) Chapter 11 of Title 18, U.S.C., relating to bribery, graft, and conflicts of interest, as appropriated to the employees concerned.

(b) Lobbying with appropriated funds (18 U.S.C. 1913).

(c) Striking against the Government (5 U.S.C. 7311, 18 U.S.C. 1918).

(d) Disclosure of classified information (18 U.S.C. 798) and the disclosure of confidential information (18 U.S.C. 1905).

(e) Misuse of the franking privilege (18 U.S.C. 1719).

(f) Fraud or false statements in a Government matter (18 U.S.C. 1001).

(g) Mutilating or destroying a public record (18 U.S.C. 2071).

(h) Counterfeiting and forging transportation requests (18 U.S.C. 508).

(i) The (1) embezzlement of Government money or property (18 U.S.C. 641); (2) failing to account for public money (18 U.S.C. 643); and (3) embezzlement of the money or property of another person in the possession of an employee by reason of his employment (18 U.S.C. 654).

(j) Unauthorized use of documents relating to claims from or by the Government (18 U.S.C. 285).

(k) Political activities, solicitations and contributions (Subchapter III of Chapter 73 of Title 5, U.S.C., and 18 U.S.C. 602, 603, 607, and 608).

(l) Acting as the agent of a foreign principal registered under the Foreign Agents Registration Act (18 U.S.C. 219).

(m) Deceit in an examination or personnel action in connection with Government employment (18 U.S.C. 1917).

(n) Employment of an individual convicted of felonious rioting or a related offense (5 U.S.C. 7313).

(o) Habitual use of intoxicants in excess (5 U.S.C. 7352).

(p) A public official appointing or promoting a relative, or advocating such an appointment or promotion (5 U.S.C. 3110).

(q) Self-dealing with a private foundation (26 U.S.C. 4941, 4946). "Self-dealing" is defined in the statute to include certain transactions involving an employee's receipt of pay, a loan, or reimbursement for travel or other expenses from, or his sale to or purchase of property from, a private foundation.

§ 3000.735-314 Statutory provisions prescribed for the Commission.

Pursuant to Executive Order No. 11570 and consistent with 39 U.S.C. 3604(d) and 410, the following regulations are prescribed for employees of the Commission on the basis of the statutory authority identified in each paragraph:

(a) Passenger motor vehicles and aircraft owned by the Commission or the Government shall be used exclusively for official purposes; and "official purposes" shall not include the transportation of employees between their domiciles and places of employment, except in cases of medical officers on out-patient medical service and except in cases of employees engaged in fieldwork the character of whose duties makes such transportation necessary and then only as to such latter cases when the same is approved by the Chairman of the Commission. An employee who willfully uses or authorizes the use of any passenger motor vehicle or aircraft owned by the Commission or the Government, or of any passenger motor vehicle or aircraft leased by the Commission or the Government, for other than official purposes or otherwise violates the provisions of this paragraph shall be suspended without compensation, for not less than 1 month, and shall be suspended for a longer period or removed from the Commission if circumstances warrant. (Source: 31 U.S.C. 638a(c)(2).)

(b) It shall be unlawful for any employee to communicate in any manner or by any means, to any other person whom the employee knows or has reason to believe to be an agent or representative of any foreign government or an officer or member of any Communist organization as defined in 50 U.S.C. 782(5), any information of a kind which shall have been classified by the President (or the Chairman of the Commission, the Postmaster General, or the head of an executive agency as defined in 5 U.S.C. 105 with the approval of the President) as affecting the security of the United States, knowing or having reason to know that such information has been so classified, unless the employee shall have been specifically authorized by the President or the Chairman of the Commission to make such disclosure of such information. An employee who violates this paragraph is subject to the penalties provided in 50 U.S.C. 783 and legal actions under this paragraph are governed by that section. (Source: 50 U.S.C. 783.)

(c) When there is in effect a final order of the Subversive Activities Control Board determining any organization to be a Communist-action organization or a Communist-front organization, it shall be unlawful for any member of such organization, with knowledge or notice of such final order of the Board in seeking, accepting, or holding any office or employment with the Commission, to conceal or fail to disclose the fact that he is a member of such organization; or to hold an office or employment with the Commission. Also, it shall be unlawful for any employee of the Commission, with knowledge or notice of such final order of the Subversive Activities Control Board, to contribute funds or services to such organization; or to advise, counsel or urge any person, with knowledge or notice that such person is a member of such organization, to perform, or to omit to perform, any act if such act or omission would constitute a violation of any provision of this paragraph. (Source: 50 U.S.C. 784.)

§ 3000.735-315 Conduct and responsibilities of special Government employees.

(a) A special Government employee shall not use his employment with the Commission for a purpose that is, or gives the appearance of being, motivated by the desire for private gain for himself or another person, particularly one with whom he has family, business, or financial ties.

(b) A special Government employee shall not use inside information obtained as a result of his employment with the Commission for private gain for himself or another person whether by direct action on his part or by counsel, recommendation, or suggestion to another person, particularly one with whom he has family, business, or financial ties. For the purposes of this section, "inside information" means information obtained under Government authority which has not become part of the body of public information.

(c) A special Government employee who engages in teaching, lecturing, or writing, whether for or without compensation, shall not for such purposes make use of information obtained as a result of his employment with the Commission, except when that information has been made available to the general public or will be made available on request, or when the Counselor gives written authorization for the use of nonpublic information on the basis that such use is in the public interest.

(d) A special Government employee shall not use his employment with the Commission to coerce, or give the appearance of coercing, a person to provide financial benefit to himself or another person, particularly one with whom he has family, business, or financial ties.

(e) Except as provided in paragraph (f) of this section, a special Government employee, while so employed or in connection with his employment, shall not receive or solicit from a person having business with the Commission anything of value as a gift, gratuity, loan, entertainment, or favor for himself or another person, particularly one with whom he has family, business, or financial ties.

(f) Notwithstanding paragraph (e) of this section, a special Government employee shall be allowed the same latitude as is authorized for regular employees by paragraphs (b) and (c) of § 3000.735-306.

(g) Attention of special Government employees is directed to the provisions of § 3000.735-202, making the provisions of this Part generally applicable to their activities.

§ 3000.735-316 Additional prohibitions—special Government employees.

(a) In addition to the disqualification described in § 3000.735-302, a special Government employee is subject to the following major prohibitions:

(1) He may not, except in the discharge of his official duties:

(i) Represent anyone else before a court or Government agency in a matter in which the United States is a party or has an interest and in which he has at any time participated personally and substantially for the Government (18 U.S.C. 203 and 205), or

(ii) Represent anyone else in a matter pending before the Commission unless he served there no more than 60 days during the previous 365 (18 U.S.C. 203 and 205). He is bound by this restraint despite the fact that the matter is not one in which he has ever participated personally and substantially.

(2) He may not, after his employment with the Commission has ended, represent anyone other than the United States in connection with a matter in which the United States is a party or has an interest and in which he participated personally and substantially for the Government (18 U.S.C. 207(a)).

(3) He may not, for 1 year after his employment with the Commission has ended, represent any one other than the United States in connection with a matter in which the United States is a party or has an interest and which was within the boundaries of his official responsibility during the last year of his employment with the Commission (18 U.S.C. 207(b)). (This temporary restraint is permanent if the matter is one in which he participated personally and substantially. See paragraph (a)(2) of this section.)

(b) Exemptions or exceptions from the prohibitions described in paragraph (a) of this section are permitted under certain circumstances; for the method of obtaining such exemptions or exceptions, see § 3000.735-304.

Subpart D—Reporting Outside Employment and Financial Interests

§ 3000.735-401 General standards.

The provisions in this Subpart D are in addition to the general standards relative to outside employment and other activity in § 3000.735-307. Regardless of whether or not a regular employee is required to file a statement of employment and financial interests under this subpart, a regular employee shall not engage in outside employment without obtaining the approval of the Counselor required by § 3000.375-307(f). Each employee shall annually certify to the Counselor that, to the best of his or her knowledge, information and belief, neither the employee nor his or her spouse, minor children and other relatives who are residents of the employee's immediate household have any financial interests or any outside employment which violate the Commission's Standards of Conduct.

(E.O. 11222 of May 8, 1965, 3 CFR 1964-1965 Comp., p. 306; E.O. 11570 of Nov. 24, 1970, 35 FR 18183; and 5 CFR Part 735, 39 U.S.C. 3603)

[36 FR 5412, Mar. 23, 1971, as amended at 47 FR 19133, May 4, 1982; 51 FR 5069, Feb. 11, 1986]

§ 3000.735-402 Reporting employment and financial interests—regular employees.

(a) Employees designated in paragraph (b) of this section (referred to hereinafter in this subpart as "covered employees") shall submit financial disclosure statements which satisfy the disclosure requirements of section 202 of the Ethics in Government Act of 1978, Pub. L. 95-521 (92 Stat. 1837). These financial disclosure statements shall be furnished to covered employees by the designated agency official.

(1) A financial disclosure statement shall be filed by a covered employee within 30 days of assuming a position with the Commission. If such individual has left another government position for which public financial disclosure statements were filed, a copy of the most recent such statement will fulfill the requirement of this paragraph. With respect to Commissioners, the financial disclosure statement filed by such Commissioner with the Commission in connection with his or her nomination to the position of Commissioner will fulfill the requirement of this paragraph.

(2) A financial disclosure statement shall be filed by covered employees annually no later than May 15 covering the preceding calendar year.

(3) In the event of termination of employment, the terminated employee shall file a financial disclosure statement if the terminated employee was at Executive Service Level B or above, and has not in the interim accepted another position which requires a financial disclosure statement satisfying the disclosure requirements of section 202 of Pub. L. 95-521 (92 Stat. 1837). The financial disclosure statement for the terminated employee must be filed no later than the 30th day after termination, covering the preceding calendar year if the annual May 15 report has not been filed, and the portion of the present calendar year up to the date of termination.

(b) The following designated employees shall submit financial disclosure statements with the designated agency official.

(1) Commissioners. Copies of the financial disclosure statements submitted by the Commissioners and the designated agency official shall be transmitted to the Director of the Office of Government Ethics.

(2) An employee whose basic rate of pay is equivalent to or greater than EAS-25 adjusted pursuant to 39 U.S.C. 3604.

(3) A special employee whose basic rate of pay is equivalent to or greater than EAS-25 as adjusted under 39 U.S.C. 3604 who is reasonably expected to perform the duties of this office or position for more than sixty days in a calendar year.

(4) An employee not required to submit a statement under paragraph (b)(2) of this section whose position has been determined by the Chairman to have duties and responsibilities which require the incumbent to report employment and financial interests in order to avoid involvement in a possible conflicts-of-interest situation and to carry out the purpose of law, Executive order, and this part.

(c) When completing a financial disclosure statement, covered employees shall include such information relating to employment; income; gifts and reimbursements; interest in property; liabilities; purchase, sale and exchange of property; positions held and agreements as is required to be reported for the covered employee, the covered employee's spouse and dependent children by section 202 of the Ethics in Government Act, Pub. L. 95-521 (92 Stat. 1837).

(d) Precise amounts of financial interests, indebtedness, and the value of real property need not be included on a statement; however, when the reviewer determines that such precise amounts are needed to make an adequate review, the employee shall disclose the precise amounts.

(e) If any information required to be included on the financial disclosure statement, including holdings placed in trust, is not known to the employee but is known to another person, the employee shall request that other person to submit the information in his behalf, except when the trust is a blind, no-control trust in which case a copy of the trust shall be submitted for review.

(f) This section does not require an employee to submit any information relating to positions held in religious, social, fraternal, political entities and those solely of an honorary nature.

(g) The financial disclosure statements required of employees are in addition to, and not in substitution for, or in derogation of, any similar requirement imposed by law, order, or regulation. The submission of a statement by an employee does not permit him or any other person to participate in a matter in which his or the other person's participation is prohibited by law, order, or regulation.

(h) An employee who believes that his position has been improperly included as one requiring the submission of a statement is entitled to obtain a review of his complaint under the Commission's grievance procedure.

(i)(1) The designated agency official shall hold each financial disclosure statement of each employee who is paid basic compensation at a rate equivalent to or greater than EAS-25 through Executive Level A in confidence. The designated agency officia is responsible for maintaining the financial disclosure statements in confidence and shall not allow access to, o allow information to be disclosed fro a statement except to carry out th purpose of this subpart. The designated agency official may not disclose i formation from a statement outsid the Commission except as the Chairman of the Commission may determine for good cause shown.

(2) The Commission shall make eac financial disclosure statement of eac employee, including Commissioner paid basic compensation at a ra equivalent to or greater than Executive Service Level B available to th public in accordance with the provisions of paragraph (i)(2) (i) and (ii) o this section, together with a copy o the offical position description of th Government office or position held b the reporting individual involved (i available) which shall be added t such report by such individuals' designated agency official.

(i) The Commission shall, within fi teen days after any report is receive by the agency under this title, permi inspection of such report by or furni a copy of such report to any person requesting such inspection or copy.

(ii) The Chairman may require reasonable fee to be paid in a amount which is found necessary recover the cost of reproduction mailing of such report excluding a salary of any employee involved such reproduction or mailing. A cop of such report may be furnished with out charge or at a reduced charge if is determined that waiver or reductio of the fee is in the public interest.

(j) Financial disclosure statemen shall be retained by the Commissio If such statements are available fo public inspection under paragrap (i)(2) of this section, such statemen shall be made available to the publi for a period of six years after recei of the statements. All statements sha be destroyed six years after recei unless needed in an ongoing investig tion.

(E.O. 11222 of May 8, 1965, 3 CFR 1964-19 Comp., p. 306; E.O. 11570 of Nov. 24, 19

35 FR 18183; and 5 CFR Part 735, 39 U.S.C. 3603)

[44 FR 27658, May 11, 1979, as amended at 47 FR 19133, May 4, 1982; 51 FR 5069, Feb. 11, 1986]

§ 3000.735–403 Reporting employment and financial interests—special Government employees.

(a) At the time of appointment each special Government employee who is not reasonably expected to perform the duties of his office or position for more than sixty days in a calendar year shall submit a financial disclosure statement furnished by the designated agency official. The special Government employee shall keep his statement current during the period of his employment.

(b) Paragraphs (c), (d), (e), (f), (g), (h), (i), and (j) of § 3000.735–402 are applicable to statements submitted under this section.

[44 FR 27659, May 11, 1979]

§ 300.735–404 Reporting employment and financial interests—detailees.

(a) When a member of the uniformed services or an employee of a Government agency other than the Commission is assigned or detailed to the Commission to perform duties of a type that would require the submission of a financial disclosure statement if performed by an employee of the Commission, the individual so assigned or detailed (referred to in this section as a "detailee") shall submit a financial disclosure statement as provided in § 3000.735–402(c) on the form furnished by the designated agency official. The detailee shall submit the statement at the start of the detail and shall submit supplementary statements as may be required, by the designated agency official.

(b) Paragraphs (c), (d), (e), (f), (g), (h), (i), and (j) of § 3000.735–402 are applicable to statements submitted under this section.

[44 FR 27660, May 11, 1979]

§ 3000.735–405 Reviewing statements; remedial action.

(a) Each statement submitted under this subpart shall be reviewed by the designated agency official or his designee. The review is for the purpose of determining whether there exists a conflict, or appearance of conflict, between the interests of the employee or special Government employee concerned and the performance of his service for the Commission. If the designated agency official believes that such a conflict or appearance of conflict exists, the designated agency official shall provide the employee with an opportunity to explain the conflict or appearance of a conflict. When the reviewer determines that additional information is needed to make an adequate review, the employee shall disclose such additional information. If the designated agency official concludes that remedial action should be taken, he shall refer the statement to the Chairman of the Commission with his recommendation for such action. The Chairman of the Commission, after consideration of the employee's explanation and such investigation as he considers appropriate, shall direct appropriate remedial action if he considers it necessary. If the designated agency official concludes that remedial action is not necessary he may close the matter.

(b) Remedial action pursuant to paragraph (a) of this section, or by reason of the violation of any provision in this part, may include, but is not limited to:

(1) Changes in assigned duties.

(2) Divestment by the employee of his conflicting interest.

(3) Disqualification for a particular action.

(4) Exemption pursuant to § 3000.735–302(f).

(5) Disciplinary action. (See § 3000.735–205).

(6) Termination of assignment or detail in the case of a detailee under § 3000.735–404.

[44 FR 27660, May 11, 1979]

Subpart E—Ex Parte Communications

§ 3000.735–501 Ex parte communications prohibited.

Decision-making Commission personnel, as defined in § 3001.7(a), shall not, either in an official or unofficial capacity, participate in any ex parte communication—either oral or written—with any person regarding (1) a particular matter (substantive or procedural) at issue in contested proceedings before the Commission or (2) the substantive merits of a matter that is likely to become a particular matter at issue in contested proceedings before the Comission. A particular matter is at issue in contested proceedings before the Commission when it is a subject of controversy in a hearing held under 39 U.S.C. 3624 or 3661(c). However, this section does not prohibit participation in off-the-record proceedings conducted under regulations adopted by the Commission for hearings held under 39 U.S.C. 3624 or 3661(c).

[45 FR 65581, Oct. 3, 1980]

§ 3000.735-502 Public record of ex parte communications.

As ex parte communications (either oral or written) may occur inadvertently notwithstanding § 3000.735-501, the employee who receives such a communication, shall—within 2 workdays after the receipt of such a communication—prepare a written report concerning the communication. The report shall identify the employee and the person or persons who participated in the ex parte communication; the circumstances which resulted in the communication; the substance of the communication; and the relationship of the communication to a particular matter at issue or likely to become at issue in contested proceedings before the Commission. When the ex parte communication concerns a particular matter at issue in a proceeding before the Commission, a copy of the report shall be submitted to each party to the proceeding. The report is a public record of the Commission and a copy thereof shall be available to any member of the public on request. This section does not apply to ex parte communications under paragraph 3000.735-501(b).

[36 FR 5412, Mar. 23, 1971, as amended at 38 FR 24899, Sept. 11, 1973]

APPENDIX A—CODE OF ETHICS FOR GOVERNMENT SERVICE

Resolved by the House of Representatives (the Senate concurring), That it is the sense of the Congress that the following Code of Ethics should be adhered to by all Government employees, including office-holders:

CODE OF ETHICS FOR GOVERNMENT SERVICE

Any person in Government service should:

1. Put loyalty to the highest moral principles and to country above loyalty to persons, party, or Government department.

2. Uphold the Constitution, laws, and legal regulations of the United States and of all governments therein and never be a party to their evasion.

3. Give a full day's labor for a full day's pay; giving to the performance of his duties his earnest effort and best thought.

4. Seek to find and employ more efficient and economical ways of getting tasks accomplished.

5. Never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not; and never accept, for himself or his family, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties.

6. Make no private promises of any kind binding upon the duties of office, since a Government employee has no private word which can be binding on public duty.

7. Engage in no business with the Government, either directly or indirectly, which is inconsistent with the conscientious performance of his governmental duties.

8. Never use any information coming to him confidentially in the performance of governmental duties as a means for making private profit.

9. Expose corruption wherever discovered.

10. Uphold these principles, ever conscious that public office is a public trust.

Passed July 11, 1958.

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AUTHORITY: 39 U.S.C. 404(b), 3603, 3622-3624, 3661, 3662, 84 Stat. 759-762, 764, 90 Stat. 1303; (5 U.S.C. 553), 80 Stat. 383.

SOURCE: 36 FR 396, Jan. 12, 1971, unless otherwise noted.

EDITORIAL NOTE: For nomenclature changes to this part, see 37 FR 25027, Nov. 25, 1972.

Subpart A—Rules of General Applicability

§ 3001.1 Construction of rules.

The rules in this part shall be liberally construed to secure just and speedy determination of issues.

[38 FR 4327, Feb. 13, 1973]

§ 3001.3 Scope of rules.

The rules of practice in this part are applicable to proceedings before the Postal Rate Commission under the Act, including those which involve a hearing on the record before the Commission or its designated presiding officer. They do not preclude the informal disposition of any matters coming before the Commission not required by statute to be determined upon notice and hearing.

§ 3001.4 Method of citing rules.

This part shall be referred to as the "rules of practice." Each section, paragraph, or subparagraph shall include only the numbers and letters to the right of the decimal point. For example, "3001.24 *Prehearing conferences*" shall be referred to as "section 24."

§ 3001.5 Definitions.

(a) "Act" means the Postal Reorganization Act (84 Stat. 719, Title 39, U.S.C.), as amended.

(b) "Postal Service" means the U.S. Postal Service established by the Act.

(c) "Commission" or "Commissioner" means, respectively, the Postal Rate Commission established by the Act or a member thereof.

(d) "Secretary" means the Secretary or the Acting Secretary of the Commission.

(e) "Presiding officer" means the Chairman of the Commission in proceedings conducted by the Commission en banc or the Commissioner or Administrative Law Judge of the Commission designated to preside at hearings or conferences.

(f) "Person" means an individual, a partnership, corporation, trust, unincorporated association, public or private organization, or governmental agency.

(g) "Party" means the Postal Service, a complainant, an appellant, or a person who has been permitted to intervene in a proceeding before the Commission.

(h) "Participant" means any party and the officer of the Commission who is designated to represent the interests of the general public and, for purposes of §§ 3001.11(e), 3001.12, 3001.21, 3001.23, 3001.24, 3001.29, 3001.30, 3001.31, and 3001.32 only, it also means persons granted limited participation.

(i) "Complainant" means a person or interested party who as permitted by section 3662 of the Act files a complaint with the Commission in the form and manner hereinafter prescribed.

(j) "Hearing" means a hearing under sections 556 and 557 of Title 5, U.S.C. (80 Stat. 386), as provided by sections 3624, 3661, and 3662 of the Act.

(k) "Record" means the transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, which constitutes the exclusive record for decision.

(l) "Effective date" of an order or notice issued by the Commission or an officer thereof means the date of iss ance unless otherwise specifically provided.

(m) "Appellant" means a person who as permitted by 39 U.S.C. 404(b) appeals to the Commission a determination of the Postal Service to close or consolidate a post office.

(n) "Commission meeting" means the deliberations of at least three Commissioners where such deliberations determine or result in the joint conduct or disposition of official Commission business, but does not include deliberations required or permitted by § 3001.43(d) or § 3001.43(e).

(o) "Ex parte communication" means an oral or written communication not on the public record with respect to which reasonable prior notice to all participants and limited participators is not given, but it shall not include requests for status reports on any matter or proceeding covered by Subchapter II of Chapter 5 of Title 5 or a proceeding conducted pursuant to Subpart H of this part.

(p) "Domestic Mail Classification Schedule" means the classification schedule, including schedules of full and phased rates and fees, adopted by the Decision of the Governors of the U.S. Postal Service Re Recommended Decision of the Postal Rate Commission Regarding the Proper Scope and Extent of the Mail Classification Schedule, issued April 3, 1979, and any amendments thereto adopted pursuant to the procedures of Subchapter III, Chapter 36, Title 39 of the U.S.C.

[36 FR 396, Jan. 12, 1971, as amended at 38 FR 4327, Feb. 13, 1973; 42 FR 8142, Feb. 2, 1977; 42 FR 10992, Feb. 25, 1977; 42 FR 13290, Mar. 10, 1977; 44 FR 26075, May 4, 1979]

§ 3001.6 Appearances.

(a) *By whom.* An individual may appear in his own behalf; a member of a partnership may represent the partnership; and an officer may represent a corporation, trust, unincorporated association, or governmental agency. A person may be represented in a proceeding by an attorney at law admitted to practice and in good standing before the Supreme Court of the United States, the highest court of any State or Territory of the United States or the District of Columbia, or the Court of Appeals or the District Court for the District of Columbia.

(b) *Authority to act.* When an officer of any party or an attorney acting in a representative capacity appears in person or signs a paper filed with the Commission, his personal appearance or signature shall constitute a representation to the Commission that he is authorized to represent the particular party in whose behalf he acts. Any person appearing before or transacting business with the Commission in a representative capacity may be required by the Commission or the presiding officer to file evidence of his authority to act in such capacity.

(c) *Designation for service.* A person intending to appear before the Commission or its presiding officer in a representative capacity for a party in a proceeding shall file with the Commission a notice of appearance in the form prescribed by the Secretary unless the person is named in an initial filing of the party whom he represents as a person to whom communications from the Commission in regard to the filing are to be addressed. Failure to file a notice required by this paragraph shall constitute a waiver of the right to service of documents.

(d) *Standards of conduct.* Individuals practicing before the Commission shall conform to the standards of ethical conduct required of practitioners in the courts of the United States.

(e) *Disqualification and suspension.* After hearing, the Com ission may disqualify and deny, temporarily or permanently, the privilege of appearing and practicing before it in any way to any individual who is found not to possess the requisite qualifications, or to have engaged in unethical or improper professional conduct. Contumacious conduct at any hearing before the Commission or its presiding officer shall be ground for exclusion of any individual from such hearing and for summary suspension for the duration of the hearing by the Commission or the presiding officer.

[36 FR 396, Jan. 12, 1971, as amended at 38 FR 4327, Feb. 13, 1973; 51 FR 8827, Mar. 14, 1986]

§ 3001.7 Ex parte communications.

(a) *Definitions*—(1) *Decision-making Commission personnel.* Subject to the exception stated in paragraph (a)(2)(ii) of this section, the following categories of persons are designated "decision-making Commission personnel":

(i) The Commission and their personal office staffs;

(ii) The General Counsel and his staff;

(iii) The Director of the Office of Technical Analysis and Planning and his staff.

(iv) Any other employee who may reasonably be expected to be involved in the decisional process.

(2) *Non-decision-making Commission personnel.* The following categories of persons are designated "non-decision-making Commission personnel":

(i) All Commission personnel other than decision-making Commission personnel;

(ii) Decision-making Commission personnel not participating in the decisional process owing to the prohibitions of § 3001.8 or 39 CFR 3000.735, Subpart C.

(b) *Prohibition.* In any agency proceeding that is required to be conducted in accordance with section 556 of Title 5 or a proceeding conducted pursuant to Subpart H of this part, except to the extent required for the disposition of ex parte matters as authorized by law:

(1) Interested persons outside the Commission and non-decision-making Commission personnel shall not make or knowingly cause to be made to any Commission decision-making personnel ex parte communications relevant to the merits of the proceeding;

(2) Commission decision-making personnel shall not make or knowingly cause to be made to any interested person outside the Commission or to non-decision-making Commission personnel ex parte communications relevant to the merits of the proceeding.

(3) Commission decision-making personnel who receive ex parte communications relevant to the merits of the proceeding shall decline to listen to such communications and explain that the matter is pending for determination. Any recipient thereof shall advise the communicator that he will not consider the communication and shall promptly and fully inform the Commission in writing of the substance of and the circumstances attending the communication, so that the Commission will be able to take appropriate action.

(4) Commission decision-making personnel who receive, or who make or knowingly cause to be made, communications prohibited by this paragraph shall place on the public record of the proceeding:

(i) All such written communications;

(ii) Memoranda stating the substance of all such oral communications; and

(iii) All written responses, and memoranda stating the substance of all oral responses, to the materials described in paragraphs (b)(4)(i) and (b)(4)(ii) of this section.

(5) Requests for an opportunity to rebut, on the record, any facts or contentions contained in an ex parte communication which have been placed on the public record of the proceeding pursuant to paragraph (b)(4) of this section may be filed in writing with the Commission. The Commission will grant such requests only where it determines that the dictates of fairness so require. Generally, in lieu of actually receiving rebuttal material, the Commission will direct that the alleged factual assertion and the proposed rebuttal be disregarded in arriving at a decision.

(c) *Applicability.* (1) The prohibitions of paragraph (b) of this section shall apply beginning at the time at which a proceeding is noticed for hearing or appeal unless the person responsible for the communication has knowledge that it will be noticed, in which case the prohibitions shall apply beginning at the time of his acquisition of such knowledge.

(2) Paragraph (b) of this section does not constitute authority to withhold information from Congress.

(d) *Violations of ex parte rules.* (1) Upon notice of a communication knowingly made or knowingly caused to be made by a party in violation of paragraph (b) of this section, the Commission, administrative law judge, or other employee presiding at the hearing may, to the extent consistent with the interests of justice and the policy of the underlying statutes, require the party to show cause why his claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation.

(2) The Commission may, to the extent consistent with the interests of justice and the policy of the underlying statutes administered by the Commission, consider a violation of paragraph (b) of this section sufficient grounds for a decision adverse to a party who has knowingly committed such violation or knowingly caused such violation to occur.

[45 FR 65580, Oct. 3, 1980]

§ 3001.8 No participation by investigative or prosecuting officers.

In any proceeding noticed pursuant to § 3001.17, no officer, employee or agent of the Commission who appears in the hearing in a proceeding before the Commission as an attorney or witness or who actively participates in the preparation of evidence or argument presented by such persons, shall participate or advise as to the intermediate decision or Commission decision in that proceeding except as a witness or counsel in public proceedings.

§ 3001.9 Filing of documents.

(a) *Filing with the Commission.* The filing of any written document required by these rules or any applicable statute, rule, regulation or order of the Commission, or by direction of the presiding officer shall be made by filing with the Office of the Secretary, Postal Rate Commission, Washington, DC 20268, during normal business hours on a date no later than that specified for such filing. Documents received after the close of normal business hours or on a Saturday, Sunday, or holiday, shall be deemed to be filed on the next regular business day.

(b) *Acceptance for filing.* Only such documents as conform to the requirements of this part and any other applicable rule, regulation or order of the Commission shall be accepted for filing. Unacceptable filings will be rejected by the Secretary and will not be included in the file in the proceeding involved. The Secretary shall notify the sender of any unacceptable document and all parties to the proceeding in which such document was tendered that such document was rejected. Acceptance for filing shall not waive any failure to comply with the rules, and such failure may be cause for subsequently striking all or any part of any document.

§ 3001.10 Form and number of copies of documents.

(a) *Typewritten.* If not printed, documents filed with the Commission shall be typewritten on paper of letter size, 8 to 8½ inches wide by 10½ to 11 inches long, with left-handed margin not less than 1½ inches wide and other margins not less than 1 inch, except that tables, charts or special documents attached thereto may be larger if required, provided that they are folded to the size of the document to which they are attached. The impression shall be on only one side of the paper unless there are more than 10 pages. The text shall be double-spaced except that footnotes and quotations of more than a few lines may be single spaced. Type not smaller than elite shall be used. If the document is bound, it shall be bound on the left side. Copies of documents for filing and service may be reproduced by any duplicating process that produces clear and legible copies.

(b) *Printed.* Printed documents filed with the Commission shall, insofar as practicable, not be less than 10-point type adequately leaded, on unglazed paper cut or folded to a size of 8 to 8½ inches wide and 10½ to 11 inches long, with inside margin not less than 1 inch wide, and with double-leaded text and single-leaded, indented quotations.

(c) *Number of copies.* Except for correspondence or as otherwise required by the Commission, the Secretary, or the presiding officer in any proceeding, all persons shall file with the Secretary, an original and 24 fully conformed copies of each document required or permitted to be filed under this part. The copies need not be signed but shall show the full name of the person signing the original document and the certificate of service attached thereto.

[36 FR 396, Jan. 12, 1971, as amended at 38 FR 19045, July 17, 1973]

§ 3001.11 General contents of documents.

(a) *Caption and title.* The caption of a document filed with the Commission in any proceeding shall clearly show the docket designation and title of the proceeding before the Commission. The title of such document shall show the name of the person in whose behalf the filing is made and a brief description of the document or the nature of the relief sought therein (i.e., motion for extension, brief on exceptions, complaint, petition to intervene, answer to complaint). If the document is filed on behalf of more than one person, a single name only need be included in the title.

(b) *Designation of person to receive service.* The first page of the initial document filed by any person in any proceeding shall state the name and full post office address of the person or persons who may be served with any documents relating to the proceeding.

(c) *Contents.* In the event there is no rule, regulation or order of the Commission which specifically prescribes the contents of any document to be filed, such document shall contain a proper identification of the parties concerned and a concise but complete statement of the relief sought and of the facts and citations of authority and precedent relied upon.

(d) *Improper matter.* Defamatory, scurrilous, or unethical matter shall not be included in any document filed with the Commission.

(e) *Subscription.* The original of any document filed with the Commission shall be signed in ink by the participant filing the same or by an authorized officer, employee, attorney or other representative, and all other copies of such document filed with the Commission and served on the participants in any proceeding shall be fully conformed thereto. The signature of any person subscribing any document filed with the Commission constitutes a certification that he has read the document being subscribed and filed; that he knows the contents thereof; that if executed in any representative capacity, the document has been subscribed and executed in the capacity specified in the document with full power and authority so to do; that to the best of his knowledge, information and belief every statement contained in the document is true and no such statements are misleading; and that such document is not filed for purposes of delay.

(f) *Table of contents.* All documents other than briefs filed with the Commission consisting of 20 or more pages shall contain a subject-index of the matter in such document with page references.

(g) *Certificate of service.* There shall be attached to the original of each document filed with the Commission a certificate of service signed in ink showing service on all participants in a proceeding as prescribed by § 3001.12. All other copies filed and served shall be fully conformed thereto.

§ 3001.12 Service of documents.

(a) *Service by the Commission.* Notices, orders, and other similar documents issued by the Commission or presiding officer shall be served by the Secretary upon the participants in the proceeding individually or by such groups as may be directed by the Commission or presiding officer.

(b) *Service by the parties.* Every document filed by any person with the Commission in a proceeding shall be served by the person filing such document upon the participants in the proceeding individually or by such groups as may be directed by the Commission or presiding officer.

(c) *Limitation on extent of service.* To avoid the imposition of an unreasonable burden upon participants, the Commission or the presiding officer may, by appropriate order, limit service to service upon participants intending to actively participate in the hearing, or upon a person or persons designated for properly representative groups, or by requiring the making of documents available for convenient public inspection, or by any combination of such methods.

(d) *Service list.* The Secretary shall maintain a current service list in each proceeding which shall include the participants in that proceeding and the person or persons designated for service of documents by each party with the address designated in the party's initial pleading in such proceeding or a notice of appearance as provided in § 3001.6(c); provided, however, the Secretary is not required to include on such list more than two designated representatives for any party to the proceeding. The service list shall show the participants actively participating in the hearing and representative groups established pursuant to paragraph (c) of this section. Service on the persons, active participants or groups on the Secretary's service list in any proceeding, as directed by the Commission or hearing officer, shall be deemed service in compliance with the requirements of this section.

(e) *Method of service.* Service may be made by first class mail or personal delivery to the address shown for the persons designated on the Secretary's service list. Service of any document upon the Postal Service shall be made by delivering or mailing six copies thereof to the Office of the Assistant General Counsel, Postal Rate and Mail Classifications Office, U.S. Postal Service, Washington, DC 20260.

(f) *Date of service.* Whenever service is made by mail, the date of mailing shall be the date of service. Whenever service is made by personal delivery, the date of such delivery shall be the date of service.

(g) *Form of certificate of service.* The certificate of service shall show the name of the participant or his counsel making service, the date and place of service, and include the statement that "I hereby certify that I have this day served the foregoing document upon all participants of record in this proceeding in accordance with section 12 of the rules of practice."

[36 FR 396, Jan. 12, 1971, as amended at 38 FR 4327, Feb. 13, 1973; 51 FR 8827, Mar. 14, 1986]

§ 3001.13 Docket and hearing calendar.

The Secretary shall maintain a docket of all proceedings, and each proceeding as initiated shall be assigned an appropriate designation. The Secretary shall maintain a hearing calendar of all proceedings which have been set for hearing, which proceedings shall be heard on the date set in the hearing order, except that the Commission may for cause, with or without motion, at any time with due notice to the parties advance or postpone the date of hearing. The docket and hearing calendar shall be available for public inspection during the office hours of the Commission, insofar as consistent with the proper discharge of the Commission's duties.

§ 3001.14 Consolidation and separation of proceedings.

The Commission, with or without motion, may order proceedings involving related issues or facts to be consolidated for hearing of any or all matters in issue in such proceedings. The Commission may sever proceedings which have been consolidated, or order separate proceedings on any issue presented, if it appears that separate proceedings will be more convenient, expeditious, or otherwise appropriate.

§ 3001.15 Computation of time.

Except as otherwise provided by law, in computing any period of time prescribed or allowed by this part, or by any notice, order, rule or regulation of the Commission or a presiding officer, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included unless it is a Saturday, Sunday, or legal holiday for the Commission, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, or holiday. A part-day holiday shall be considered as other days and not as a holiday. In computing a period of time which is 5 days or less, all Saturdays, Sundays, and legal holidays of the Commission are to be excluded.

[38 FR 4327, Feb. 13, 1973; 51 FR 8827, Mar. 14, 1986]

§ 3001.16 Continuances and extensions of time.

Continuances of any proceeding or hearing and extensions of time for making any filing or performing any act required or allowed to be done within a specified time or by a specified date may be granted by the Commission or the presiding officer upon motion for good cause shown unless the time for performance or filing is limited by statute. Requests for extension of time shall be by written motion timely filed with the Commission stating the facts on which the application rests, except that after a hearing has convened, such requests shall be made by written or oral motion to the presiding officer. Requests for continuances or extensions of time may as a matter of discretion be acted upon without waiting for answers thereto.

§ 3001.17 Notice of proceeding.

(a) *When issued.* The Commission shall issue a notice of a proceeding to be determined on the record with an opportunity for any interested person to request a hearing whenever:

(1) The Postal Service files a formal request that the Commission submit a recommended decision on changes in postal rates or fees or establishing or changing the mail classification schedule;

(2) The Commission proposes on its own initiative to issue a recommended decision on changes in the mail classification schedule;

(3) The Postal Service files a request with the Commission to issue an advisory opinion on a proposed change in the nature of postal services which will generally affect service on a nationwide or substantially nationwide basis;

(4) The Commission in the exercise of its discretion determines that an opportunity for hearing should be provided with regard to a complaint filed pursuant to Subpart E of this part; or

(5) The Commission in the exercise of its discretion determines to institute any other proceeding under the Act.

(a-1) *Appellate proceedings under 39 U.S.C. 404(b).* The Commission shall issue a notice of proceeding to be determined on a record compiled by the Postal Service whenever:

(1) An appeal of a determination of the Postal Service to close or consolidate a post office is taken to the Postal Rate Commission pursuant to Subpart H of this part; or

(2) An application to suspend the effective date of a determination of the Postal Service to close or consolidate a post office pending appeal to the Postal Rate Commission is made pursuant to Subpart H of this part.

(b) *Publication and service of notice.* Each notice of proceeding shall be published in the FEDERAL REGISTER and served on the Postal Service, the complainant in a complaint proceeding, and the appellant in the appeal of a Postal Service determination to close or consolidate a post office.

(c) *Contents of notice.* The notice of a proceeding shall include the following:

(1) The general nature of the proceeding involved in terms of categories listed in paragraphs (a) and (b) of this section;

(2) A reference to the legal authority under which the proceeding is to be conducted;

(3) A concise description of proposals for changes in rates or fees, proposals for the establishment of or changes in the mail classification schedule, proposals for changes in the nature of postal services, in the case of a complaint, an identification of the complainant and a concise description of the subject matter of the complaint or, in the case of an appeal, an identification of the appellant and a summarization of the Postal Service determination to close or consolidate under review;

(4) The date by which petitions for leave to intervene and requests for hearing must be filed; and

(5) Such other information as the Commission may desire to include.

[36 FR 396, Jan. 12, 1971, as amended at 4 FR 10992, Feb. 25, 1977; 42 FR 13826, Ma 14, 1977]

§ 3001.18 Nature of proceedings.

(a) *Proceedings to be set for hearin* In any case noticed for a proceeding t be determined on the record pursua to § 3001.17, the Commission shal hold a public hearing if a hearing i requested by any party to the proceeding or if the Commission in the exercise of its discretion determines that a hearing is in the public interest. The Commission may give notice of its determination that a hearing shall be held in its original notice of the proceeding or in a subsequent notice issued pursuant to paragraph (b) of this section and § 3001.19.

(b) *Procedure in hearing cases.* In proceedings which are to be set for hearing, the Commission shall issue a notice of hearing or prehearing conference pursuant to § 3001.19. After the completion of the hearing, the Commission or the presiding officer shall receive such briefs and hear such oral argument as may be ordered by the Commission or the presiding officer pursuant to §§ 3001.34 to 3001.37, and the Commission shall then issue a recommended decision, advisory opinion, or public report, as appropriate, in accordance with the provisions of §§ 3001.38 to 3001.39.

(c) *Procedure in non-hearing cases.* In any case noticed for a proceeding to be determined on the record in which a hearing is not requested by any party or ordered by the Commission, the Commission or the presiding officer shall issue a notice of the procedure to be followed with regard to the filing of briefs and oral argument, and a recommended decision, advisory opinion, or public report, as appropriate, shall then be issued pursuant to the provisions of §§ 3001.34 to 3001.39. The Commission or presiding officer may, if necessary or desirable, call procedural conferences by issuance of a notice pursuant to § 3001.19.

§ 3001.19 Notice of prehearing conference or hearing.

In any proceeding noticed for a proceeding on the record pursuant to § 3001.17, the Commission shall give due notice of any prehearing conference or hearing in the notice of proceeding by including therein the time and place of the conference or hearing or by subsequently issuing a notice of prehearing conference or hearing. Such notice of prehearing conference or hearing shall give the title and docket designation of the proceeding, a reference to the original notice of proceeding and the date of such notice, and the time and place of the conference or hearing and the designation of the presiding officer. Similar notice shall be issued of the time and place where a hearing will be reconvened unless announcement was made thereof by the presiding officer at the adjournment of an earlier session of the prehearing conference or hearing. Such notices shall be published in the FEDERAL REGISTER and served on all participants in the proceeding involved.

§ 3001.20 Formal intervention.

(a) *Who may intervene.* A notice of intervention will be entertained in those cases that are noticed for a proceeding pursuant to § 3001.17 from any person claiming an interest of such nature that intervention is allowed by the Act, or appropriate to its administration.

(b) *Contents.* A notice of intervention shall clearly and concisely set forth the nature and extent of the petitioner's interest in the issues to be decided, including the classifications of postal service utilized by the petitioner giving rise to his interest in the proceeding, and to the extent known, the position of the petitioner with regard to the proposed changes in postal rates, fees, classifications, or services, or the subject matter of the complaint, as described in the notice of the proceeding. Such notice shall state whether or not the petitioner requests a hearing or in lieu thereof, a conference, and whether or not the petitioner intends to actively participate in a hearing. Such petition shall also include on page one thereof the name and full mailing address of no more than two persons who are to receive service of any documents relating to such proceeding.

(c) *Form and time of filing.* Notices of intervention shall be filed no later than the date fixed for such filing in any notice or order with respect to the proceeding issued by the Commission or its Secretary, unless in extraordinary circumstances for good cause shown, the Commission authorizes a late filing. Notices of interventions shall conform to the requirements of

§§ 3001.9 to 3001.11 and shall be served on the Postal Service and the complainant in a complaint proceeding pursuant to § 3001.12.

(d) *Oppositions.* Oppositions to notices of intervention may be filed by any participant in the proceeding no later than 10 days after the notice of intervention is filed. Pending Commission action, an opposition to intervention shall delay on a day-for-day basis, the date for responses to discovery requests filed by that intervenor.

(e) *Effect of intervention.* A person filing a notice of intervention shall be a party to the proceeding subject, however, to a determination by the Commission, either in response to an opposition, or sua sponte, that party status is not appropriate under the Act. Intervenors are also subject to the right of the Commission or the presiding officer as specified in § 3001.24 to require two or more intervenors having substantially like interests and positions to join together for purposes of service of documents, presenting evidence, making and arguing motions and objections, cross-examining witnesses, filing briefs, and presenting oral arguments to the Commission or presiding officer. No intervention shall be deemed to constitute a decision that the intervening party has such an interest in the proceeding that he would be aggrieved by an ultimate decision by order of the Commission.

[48 FR 15627, Apr. 12, 1983]

§ 3001.20a Limited participation by persons not parties.

Notwithstanding the provisions of § 3001.20, any person may appear as a limited participator in any case that is noticed for a proceeding pursuant to § 3001.17, in accordance with the following provisions.

(a) *Form of intervention.* Notices of intervention as a limited participator shall be in writing, shall set forth the nature and extent of the requestor's interest in the proceeding, shall include the name and full mailing address of up to two persons who are to receive service of documents by the Secretary, and shall be served on the Postal Service (and on the complainant in a complaint proceeding) pursuant to § 3001.12. Except where good cause for late filing is shown, notices of intervention as a limited participator shall be filed not later than the date fixed for the filing of notices of intervention pursuant to § 3001.20(c).

(b) *Oppositions.* Oppositions to notices to intervene as a limited participator may be filed by any participant in the proceeding no later than 10 days after the notice of intervention as a limited participator is filed.

(c) *Scope of participation.* Subject to the provisions of § 3001.30(f), limited participators may present evidence which is relevant to the issues involved in the proceeding and their testimony shall be subject to cross-examination on the same terms applicable to that of formal participants. Limited participants may file briefs or proposed findings pursuant to §§ 3001.34 and 3001.35, and within 15 days after the release of an intermediate decision, or such other time as may be fixed by the Commission, they may file a written statement of their position on the issues. The Commission or the presiding officer may require limited participators having substantially like interests and positions to join together for any or all of the above purposes. Limited participators are not required to respond to discovery requests under § 3001.25 through § 3001.28; however, limited participators, particularly those making contentions under 39 U.S.C. 3622(b)(4), are advised that failure to provide relevant and material information in support of their claims will be taken into account in determining the weight to be placed on their evidence and arguments.

[48 FR 15627, Apr. 12, 1983]

§ 3001.20b Informal expression of views by persons not parties or limited participators (commenters).

Notwithstanding the provisions of §§ 3001.19a and 3001.20, any person may file with the Commission, in any case that is noticed for a hearing pursuant to § 3001.17, an informal statement of views in writing, in accordance with the following provisions:

(a) *Contents of statement.* A statement filed pursuant to this section shall set forth the name and full mailing address of the person by whom or on whose behalf it is filed, a concise statement of the issue or issues to which the comments contained therein apply, and a clear statement of any views, opinions, or suggestions which the person filing the statement wishes to lay before the Commission.

(b) *Disposition by the Commission or presiding officer.* Statements filed pursuant to this section shall be made a part of the Commission's files in the proceeding. The Secretary shall maintain a file of such statements which shall be segregated from the evidentiary record in the proceeding, and shall be open to public inspection during the Commission's office hours. A statement or exhibit thereto filed pursuant to this section shall not be accepted in the "record," as defined by § 3001.5(k) except to the extent that they are (1) otherwise formally introduced in evidence, or (2) a proper subject of official notice, pursuant to § 3001.31(j).

(c) *Ex parte communications—exception.* A statement filed pursuant to this section shall not be considered an ex parte communication within the meaning of § 3001.7.

[42 FR 8142, Feb. 9, 1977. Redesignated at 48 FR 15627, Apr. 12, 1983]

§ 3001.21 Motions.

(a) *Scope and contents.* An application for an order or ruling not otherwise specifically provided for in this part shall be by motion. Motions shall set forth with particularity the ruling or relief sought, the grounds and basis therefor, and the statutory or other authority relied upon, and shall be filed with the Secretary and served pursuant to the provisions of §§ 3001.9 to 3001.12. All motions to dismiss proceedings or other motions which involve a final determination of the proceeding shall be addressed to the Commission. After a presiding officer is designated in any proceeding, and before the issuance of an initial decision pursuant to § 3001.39 or certification of the record to the Commission pursuant to § 3001.38, all other motions in that proceeding shall be addressed to the presiding officer.

(b) *Answers.* Within 10 days after a motion is filed, or such other period as the Commission or presiding officer may fix, any participant to the proceeding may file and serve an answer in support of or in opposition to the motion pursuant to §§ 3001.9 to 3001.12. Such answers shall state with particularity the position of the participant with regard to the ruling or relief requested in the motion and the grounds and basis and statutary or other authority relied upon. Unless the Commission or presiding officer otherwise provide, no reply to an answer or any further responsive document shall be filed.

[38 FR 4327, Feb. 13, 1973, as amended at 51 FR 8827, Mar. 14, 1986]

§ 3001.22 Requests for waiver.

Upon request by motion, any requirement of any subpart of this Part 3001 may be waived in whole or in part to the extent permitted by law upon a showing that such waiver will not unduly prejudice the interests of other participants and is consistent with the public interest and the Commission's expeditious discharge of its responsibilities under the Act. A request for waiver shall not be entertained unless it is timely filed so as to permit Commission disposition of the request prior to the date specified for the requirement for which waiver is requested. The pendency of a request for waiver does not justify or excuse any person from timely meeting the requirements of this part.

§ 3001.23 Presiding officers.

(a) *Authority delegated.* Presiding officers shall have the authority, within the Commission's powers and subject to its published rules, as follows:

(1) To regulate the course of the hearing, including the recessing, reconvening, and adjournment thereof, unless otherwise directed by the Commission, as provided in § 3001.16;

(2) To administer oaths and affirmations;

(3) To issue subpoenas authorized by law;

(4) To rule upon offers of proof and receive relevant evidence;

(5) To take or authorize that depositions be taken as provided in § 3001.33;

(6) To hold appropriate conferences before or during hearings and to rule on matters raised at such conferences including those specified in paragraph (d) of § 3001.24;

(7) To dispose of procedural requests or similar matters but not, before their initial or recommended decision, to dispose of motions made during hearings to dismiss proceedings or other motions which involve a final determination of the proceeding;

(8) Within their discretion, or upon direction of the Commission, to certify any question to the Commission for its consideration and disposition;

(9) To submit an initial or recommended decision in accordance with §§ 3001.38 and 3001.39; and

(10) To take any other action necessary or appropriate to the discharge of the duties vested in them, consistent with the statutory or other authorities under which the Commission functions and with the rules, regulations, and policies of the Commission.

(b) *Conduct of hearings.* It is the duty of the presiding officer to conduct a fair and impartial hearing and to maintain order. Any disregard by participants or counsel of his rulings on matters of order and procedure shall be noted on the record, and where he deems it necessary shall be made the subject of a special written report to the Commission. In the event that participants or counsel should be guilty of disrespectful, disorderly, or contumacious language or conduct in connection with any hearing, the presiding officer immediately may submit to the Commission his report thereon, together with his recommendations, and in his discretion, suspend the hearing.

(c) *Ex parte communication.* Except to the extent required for the disposition of ex parte matters as authorized by law and by the rules of the Commission, no presiding officer shall, in any proceeding in which the Commission may so direct, or in any proceeding required by statute to be determined on the record after opportunity for hearing, consult any person on any matter in issue unless upon notice and opportunity for all participants to be heard.

(d) *Disqualification.* A presiding officer may withdraw from a proceeding when he deems himself disqualified, or he may be withdrawn by the Commission for good cause found after timely affidavits alleging personal bias or other disqualifications have been filed.

[36 FR 396, Jan. 12, 1971, as amended at 49 FR 6490, Feb. 22, 1984; 51 FR 8827, Mar. 14, 1986]

§ 3001.24 Prehearing conferences.

(a) *Initiation and purposes.* In any proceeding the Commission or the presiding officer may, with or without motion, upon due notice as to time and place, direct the participants in a proceeding to appear for a prehearing conference for the purposes of considering all possible ways of expediting the proceeding, including those in paragraph (d) of this section. It is the intent of the Commission to issue its recommended decision or advisory opinion on requests under sections 3622, 3623, and 3661 of the Act with the utmost practicable expedition. The Commission directs that these prehearing procedures shall be rigorously pursued by the presiding officer and all participants to that end.

(b) *Informal off-the-record procedures.* In order to make the prehearing conference as effective as possible, the presiding officer may, in his discretion, direct that conferences be held off the record at the beginning of a prehearing conference or at other appropriate times, without the presiding officer being present. Such informal off-the-record conferences shall be presided over by the Commission's officer designated to represent the interests of the general public or such other person as the participants may select. At such off-the-record conferences the participants shall be expected to reach agreement on those matters which will expedite the proceeding, including the matters specified in the notice of the prehearing conference, in the ruling of the presiding officer directing that the off-the-record conference be held and in paragraph (d) of this section. A report on the results of such off-the-record conferenc shall be made to the presiding officer on the record at a time specified by the presiding officer and he shall then determine the further prehearing procedures to be followed.

(c) *Required preparation and cooperation of all parties.* All participants in any proceeding before the Commission are required and expected to come to the prehearing conference fully prepared to discuss in detail and resolve all matters specified in paragraph (d) of this section, and notice of the prehearing conference, and such other notice or agenda as may have been issued by the Commission or the presiding officer. All participants are required and expected to cooperate fully at all stages of the proceeding to achieve these objectives, through thorough advance preparation for the prehearing conference, including informal communications between the participants, requests for discovery and appropriate discovery procedures at the earliest possible time and no later than at the prehearing conference, and the commencement of preparation of evidence and cross-examination. The failure of any participant to appear at the prehearing conference or to raise any matters that could reasonably be anticipated and resolved at the prehearing conference shall not be permitted to unduly delay the progress of the proceeding and shall constitute a waiver of the rights of the participant with regard thereto, including all objections to the agreements reached, actions taken, or rulings issued by the presiding officer with regard thereto.

(d) *Matters to be pursued.* At the prehearing conference in any proceeding, the presiding officer and the participants shall consider and resolve the following matters:

(1) The definition and simplification of the issues including any appropriate explanation, clarification, or amendment of any proposal, filing, evidence, complaint or other pleading filed by any participant.

(2) Arrangement for timely completion of discovery from the Postal Service or any other participant with regard to information desired by any participant with regard to any issues in the proceeding or prior filings, evidence or pleadings of any participant.

(3) Agreement as to procedures for timely discovery with regard to any future evidentiary filings of any participant.

(4) Stipulations, admissions or concessions as to evidentiary facts, and agreements as to documentary matters, exhibits and matters of official notice, which will avoid unnecessary proof or dispute.

(5) Grouping parties with substantially like interests for purposes of presenting evidence, making and arguing motions and objections, cross-examining witnesses, filing briefs, and presenting oral argument to the Commission or presiding officer.

(6) Disclosure of the number, identity and qualifications of witnesses, and the nature of their testimony, particularly with respect to the policies of the Act and, as applicable according to the nature of the proceeding, each factor stated in section 3622 or 3623 of the Act.

(7) Limitation of the scope of the evidence and the number of witnesses to eliminate irrelevant, immaterial, or cumulative and repetitious evidence.

(8) Procedures to direct and control the use of discovery prior to the hearing and submission of written testimony and exhibits on matters in dispute so as to restrict to a bare minimum the amount of hearing time required for oral cross-examination of witnesses.

(9) Division of the proceeding where practicable into two or more phases for separate simultaneous hearings.

(10) Fixing dates for the submission and service of such written testimony and exhibits as may be appropriate in advance of the hearing.

(11) Order of presentation of the evidence and cross-examination of witnesses so that the hearing may proceed in the most expeditious and orderly manner possible.

(12) All other matters which would aid in an expeditious disposition of the proceeding, including consent of the participants to the conduct of the entire proceedings off the record.

(e) *Rulings by presiding officer.* The presiding officer at such prehearing conference, irrespective of the consent of the participants, shall dispose of by ruling (1) any of the procedural matters itemized in paragraph (d) of this section and (2) such other procedural matters on which he is authorized to rule during the course of the hearing if ruling at this stage would expedite the proceeding. Either on the record at the conclusion of such prehearing conference, or by order issued shortly thereafter, the presiding officer shall state the agreements reached by the participants, the actions taken, and the rulings made by the presiding officer. Such rulings shall control the subsequent course of the proceedings unless modified at the hearing to prevent manifest injustice.

§ 3001.25 Interrogatories for purpose of discovery.

(a) *Service and contents.* In the interest of expedition and limited to information which appears reasonably calculated to lead to the discovery of admissible evidence, any participant may serve upon any other participant in a proceeding written interrogatories requesting nonprivileged information relevant to the subject matter in such proceeding, to be answered by the participant served, who shall furnish such information as is available to the participant. A participant through interrogatories may require any other participant to identify each person whom the other participant expects to call as a witness at the hearing and to state the subject matter on which the witness is expected to testify. The participant serving the interrogatories shall file a copy thereof with the Secretary pursuant to § 3001.9 and shall serve copies upon other participants who request them.

(b) *Answers.* Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in the manner prescribed by paragraph (c) of this section. The answers are to be signed by the person making them. The party responding to the interrogatories shall serve the answers on the party who served the interrogatories within 20 days of the service of the interrogatories or within such other period as may be fixed by the presiding officer, but before the conclusion of the hearing. Copies of the answers to interrogatories shall be filed with the Secretary pursuant to § 3001.9 and shall be served upon other participants who request them.

(c) *Objections.* In the interest of expedition, the bases for objection shall be clearly and fully stated. If objection is made to part of an interrogatory, the part shall be specified. A participant claiming privilege shall identify the specific evidentiary privilege asserted and state the reasons for its applicability. A participant claiming undue burden shall state with particularity the effort which would be required to answer the interrogatory, providing estimates of cost and man-hours required, to the extent possible. An interrogatory otherwise proper is not necessarily objectionable because an answer would involve an opinion or contention that relates to fact or the application of law to fact, but the Commission or presiding officer may order that such an interrogatory need not be answered until a prehearing conference or other later time. Objections are to be signed by the attorney making them. The party objecting to interrogatories shall serve the objections on the party who served the interrogatories within 10 days of the service of the interrogatories. Copies of objections to interrogatories shall be filed with the Secretary pursuant to § 3001.9 and shall be served upon other participants who request them.

(d) *Compelled answers.* The Commission, or the presiding officer, upon motion of any participant to the proceeding, may compel an answer to an interrogatory to which an objection has been raised if the objection is found not to be valid, or may compel an additional answer if the initial answer is found to be inadequate. Such compelled answers shall be served on the party who moved to compel the answer within 10 days of the date of the order compelling the answer or within such other period as may be fixed by the presiding officer, but before the conclusion of the hearing. Copies of the answers shall be filed with the Secretary pursuant to § 3001.9 and shall be served upon other participants who request them.

(e) *Supplemental answers.* A participant who has answered interrogatories is under the duty to seasonably amend a prior answer if he obtains information upon the basis of which he knows that the answer was incorrect when made or is no longer true. (A participant filing a supplemental answer shall indicate whether the answer merely supplements the previous answer to make it current, or whether it is intended as a complete replacement for the answer previously given.)

(f) *Orders.* The Commission or the presiding officer may order that any participant or person shall answer on such terms and conditions as are just and may for good cause make any protective order, including an order limiting or conditioning interrogatories, as justice requires to protect a party or person from undue annoyance, embarrassment, oppression, or expense.

[45 FR 65578, Oct. 3, 1980]

§ 3001.26 Requests for production of documents or things for purpose of discovery.

(a) *Service and contents.* In the interest of expedition and limited to information which appears reasonably calculated to lead to the discovery of admissible evidence, any participant may serve on any other participant to the proceeding a request to produce and permit the participant making the request, or someone acting in his behalf, to inspect and copy any designated documents or things which constitute or contain matters, not privileged, which are relevant to the subject matter involved in the proceeding and which are in the custody or control of the participant upon which the request is served. The request shall set forth the items to be inspected either by individual item or category, and describe each item and category with reasonable particularity, and shall specify a reasonable time, place and manner of making inspection. The participant requesting the production of documents or things shall file a copy of the request with the Secretary pursuant to § 3001.9 and shall serve copies thereof upon other participants who ask for them.

(b) *Answers.* The participant upon whom the request is served shall serve a written answer on the participant who filed the request within 20 days after the service of the request, or within such other period as may be fixed by the presiding officer. The answer shall state, with respect to each item or category, that inspection will be permitted as requested unless the request is objected to pursuant to paragraph (c) of this section. The participant answering the request shall sign and file a copy of the answer with the Secretary pursuant to § 3001.9 and shall serve copies thereof upon other participants who request them.

(c) *Objections.* In the interest of expedition, the bases for objection shall be clearly and fully stated. If objection is made to part of an item or category, the part shall be specified. A participant claiming privilege shall identify the specific evidentiary privilege asserted and state the reasons for its applicability. A participant claiming undue burden shall state with particularity the effort which would be required to answer the request, providing estimates of cost and man-hours required, to the extent possible. Objections are to be signed by the attorney making them. The party objecting to requests shall serve the objections on the party requesting production of documents or things, upon the Secretary pursuant to § 3001.9 and upon other participants who request them, within 10 days of the request for production.

(d) *Orders.* The Commission or the presiding officer may, on such terms and conditions as are just and reasonable, order that any participant in a proceeding shall respond to a request for inspection, and may make any protective order of the nature provided in paragraph (f) of § 3001.25 as may be appropriate. Upon motion of any participant to the proceeding, the Commission or the presiding officer may compel production of documents or things to which an objection has been raised if the objection is found not to be valid. Such compelled documents or things shall be made available to the party making the motion within 10 days of the date of the order compelling production or within such other period as may be fixed by the presiding officer, but before the conclusion of the hearing. Documents or things ordered to be produced shall also be made available to the Secretary pursuant to § 3001.9 and to the other participants who request them.

[45 FR 65579, Oct. 3, 1980]

§ 3001.27 Requests for admissions for purpose of discovery.

(a) *Service and content.* In the interest of expedition any participant may serve upon any other participant a written request for the admission, for purposes of the pending proceeding only, of any relevant, unprivileged facts, including the genuineness of any documents or exhibits to be presented in the hearing. The participant requesting the admission shall file a copy of the request with the Secretary pursuant to § 3001.9 and shall serve copies thereof upon other participants who request them.

(b) *Answers.* Each matter of which an admission is requested shall be separately set forth and is admitted unless within 20 days after service of the request, or within such other period as may be fixed by the presiding officer, the participant to whom the request is directed serves upon the participant requesting the admission a written answer or files an objection pursuant to paragraph (c) of this section. A participant who answers a request for admission shall file a copy of the answer with the Secretary pursuant to § 3001.9 and shall serve copies thereof upon other participants who request them.

(c) *Objections.* In the interest of expedition, the bases for objection shall be clearly and fully stated. If objection is made to part of an item, the part shall be specified. A participant claiming privilege shall identify the specific evidentiary privilege asserted and state the reasons for its applicability. A participant claiming undue burden shall state with particularity the effort which would be required to answer the request, providing estimates of cost and man-hours required to the extent possible. Objections are to be signed by the attorney making them. The party objecting to requests for admissions shall serve the objections on the party requesting admissions, upon the Secretary pursuant to § 3001.9 and upon other participants who request them, within 10 days of the request.

(d) *Orders.* If the Commission or presiding officer determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be served, or may determine that final disposition of the request be made at a pretrial conference or at a designated time prior to the hearing. Upon motion of any participant to the proceeding, the Commission or the presiding officer may compel answers to a request for admissions to which an objection has been raised if the objection is found not to be valid. Such compelled answers shall be served on the party who moved to compel the answers within 10 days of the date of the order compelling production or within such other period as may be fixed by the presiding officer, but before the conclusion of the hearing. Copies of the answers shall be filed upon the Secretary pursuant to § 3001.9 and served upon other participants who request them.

[45 FR 65579, Oct. 3, 1980]

§ 3001.28 Failure to comply with orders for discovery.

If a participant or an officer or agent of a participant fails to obey a order of the Commission or the presiding officer to provide or permit discovery, pursuant to §§ 3001.25 to 3001.27, the Commission or the presiding officer may make such orders in regard t the failure as are just, and amon others, may direct that the matters r garding which the order was made o any other designated facts shall b taken to be established for the pu poses of the proceeding in accordan with the claim of the participants o taining the order, or prohibit the d obedient participant from introduci designated matters in evidence, strike the evidence, complaint pleadings or parts thereof.

§ 3001.29 Settlement conferences.

Any participant in a proceeding m submit offers of settlement or propo als of adjustment at any time and m request a conference between the participants to consider such offers or proposals. The Commission or the presiding officer shall afford the participants appropriate opportunity prior to or during the hearing for conferences for the purpose of considering such offers or proposals as time, the nature of the proceeding, and the public interest permit. Unaccepted offers of settlement or adjustment and proposed stipulations not agreed to shall be privileged and shall not be admissible in evidence against any participant claiming such privilege.

§ 3001.30 Hearings.

(a) *How initiated.* Hearings for the purpose of taking evidence shall be initiated by the issuance of a notice by the Commission as provided in § 3001.19.

(b) *Presiding officer.* All hearings shall be held before the Commission sitting en banc, or a duly designated presiding officer.

(c) *Entering of appearances.* The Commission or the presiding officer before whom the hearing is held will cause to be entered on the record all appearances together with a notation showing in whose behalf each such appearance has been made.

(d) *Order of procedure.* In public hearings before the Commission, the Postal Service shall open and close in proceedings which it has initiated under sections 3622, 3623, or 3661 of the Act, and a complainant shall open and close in proceedings on complaints filed under section 3662 of the Act. With respect to the order of presentation of all other participants, and in all other proceedings, unless otherwise ordered by the Commission, the presiding officer shall direct the order of presentation of evidence and issue such other procedural orders as may be necessary to assure the orderly and expeditious conclusion of the hearing.

(e) *Presentation by parties.* Any participant shall have the right in public hearings of presentation of evidence, cross-examination, objection, motion, and argument. When objections to the admission or exclusion of evidence before the Commission or the presiding officer are made, the grounds relied upon shall be stated briefly. Formal exceptions to rulings are unnecessary.

(f) *Limitations on presentation of the evidence.* The taking of evidence shall proceed with all reasonable diligence and dispatch, and to that end, the Commission or the presiding officer may limit appropriately (1) the number of witnesses to be heard upon any issue, (2) the examination by any participant to specific issues, and (3) the cross-examination of a witness to that required for a full and true disclosure of the facts necessary for the disposition of the proceeding and to avoid irrelevant, immaterial, or unduly repetitious testimony.

(g) *Motions during hearing.* After a hearing has commenced in a proceeding, a request may be made by motion to the presiding officer for any procedural ruling or relief desired. Such motions shall set forth the ruling or relief sought, and state the grounds therefor and statutory or other supporting authority. Motions made during hearings may be stated orally upon the record, except that the presiding officer may require that such motions be reduced to writing and filed separately. Any participant shall have the opportunity to answer or object to such motions at the time and in the manner directed by the presiding officer.

(h) *Rulings on motions.* The presiding officer is authorized to rule upon any such motion not formally acted upon by the Commission prior to the commencement of a prehearing conference or hearing where immediate ruling is essential in order to proceed with the prehearing conference or hearing, and upon any motion to the presiding officer filed or made after the commencement thereof, except that no motion made to the presiding officer, a ruling upon which would involve or constitute a final determination of the proceeding, shall be ruled upon affirmatively by the presiding officer except as a part of his intermediate decision. This section shall not preclude a presiding officer, within his discretion, from referring any motion made in hearing to the Commission for ultimate determination.

§ 3001.31 Evidence.

(a) *Form and admissibility.* In any public hearing before the Commission, or a presiding officer, relevant and material evidence which is not unduly repetitious or cumulative shall be admissible. Witnesses whose testimony is to be taken shall be sworn, or shall affirm, before their testimony shall be deemed evidence in the proceeding or any questions are put to them.

(b) *Documentary.* Documents and detailed data and information shall be presented as exhibits. Where relevant and material matter offered in evidence is embraced in a document containing other matter not material or relevant or not intended to be put in evidence, the participant offering the same shall plainly designate the matter offered excluding the immaterial or irrelevant parts. If other matter in such document is in such bulk or extent as would unnecessarily encumber the record, such document may be marked for identification, and, if properly authenticated, the relevant and material parts thereof may be read into the record, or, if the Commission or the presiding officer so directs, a true copy of such matter in proper form shall be received in evidence as an exhibit. Copies of documents shall be delivered by the participant offering the same to the other participants or their attorneys appearing at the hearing, who shall be afforded an opportunity to examine the entire and relevant portions thereof. Designation of a document as a library reference is a procedure for facilitating reference to the document in Commission proceedings and does not, by itself, confer any particular evidentiary status upon the document. The evidentiary status of the document is governed by this section.

(c) *Commission's files.* In case any matter contained in a report or other document on file with the Commission is offered in evidence, such report or other document need not be produced or marked for identification, but may be offered in evidence by specifying the report, document, or other file containing the matter so offered.

(d) *Public document items.* Whenever there is offered in evidence (in whole or in part) a public document, such as an official report, decision, opinion or published scientific or economical statistical data issued by any of the Executive Departments (or their subdivisions), legislative agencies or committees, or administrative agencies of the Federal Government (including Government-owned corporations) and such document (or part thereof) has been shown by the offeror thereof to be reasonably available to the public, such document need not be produced or physically marked for identification, but may be offered in evidence as a public document item by clearly identifying the document and the relevant parts thereof.

(e) *Prepared testimony.* Unless the presiding officer otherwise directs, the direct testimony of witnesses shall be reduced to writing and offered either as such or as an exhibit.

(f) *Form of prepared testimony and exhibits.* All prepared testimony and exhibits of a documentary character shall, so far as practicable, conform to the requirements of § 3001.10 (a) and (b).

(g) *Copies to participants.* Except as otherwise provided in these rules, copies of prepared testimony and exhibits shall be furnished to the presiding officer and to the participants or counsel, unless the presiding officer otherwise directs. In addition, unless otherwise directed by the presiding officer, eight copies of all prepared testimony and exhibits shall be furnished for the use of the Commission.

(h) *Reception and ruling.* The presiding officer shall rule on the admissibility of evidence and otherwise control the reception of evidence so as to confine it to the issues in the proceeding.

(i) *Offers of proof.* Any offer of proof made in connection with any ruling of the presiding officer rejecting or excluding proffered oral testimony shall consist of a statement of the substance of the evidence which counsel contends would be adduced by such testimony; and if the excluded evidence consists of evidence in documentary or written form, or of reference to documents or records, a copy of such evidence shall be marked for identific tion and shall constitute the offer of proof.

(j) *Official notice of facts.* Official notice may be taken of such matters as might be judicially noticed by the courts of the United States or of any other matter peculiarly within the general knowledge of the Commission as an expert body: *Provided,* That any participant shall, on timely request, be afforded an opportunity to show the contrary.

(k) *Introduction and reliance upon studies and analyses*—(1) *General.* In the case of all studies and analyses offered in evidence in hearing proceedings or relied upon as support for other evidence, other than the kinds described in paragraphs (k) (2) and (3) of this section, there shall be a clear statement of the study plan, all relevant assumptions and a description of the techniques of data collection, estimation and/or testing. In addition, there shall be a clear statement of the facts and judgments upon which conclusions are based, together with an indication of the alternative courses of action considered. Tabulations of input data shall be made available upon request at the offices of the Commission.

(2) *Statistical studies.* All statistical studies offered in evidence in hearing proceedings or relied upon as support for other evidence shall include a comprehensive description of the assumptions made, the study plan utilized and the procedures undertaken. Where a computer analysis is employed to obtain the result of a statistical study, all of the submissions required by § 3001.31(k)(3) shall be furnished, upon request. In addition, for each of the following types of statistical studies, the indicated information should be furnished:

(i) *Sample surveys.* (*a*) A clear description of the survey design, including the definition of the universe under study, the sampling frame and units, and the validity and confidence limits than can be placed on major estimates; and

(*b*) An explanation of the method of selecting the sample and the characteristics measured or counted.

(ii) *Experimental analyses.* (*a*) A complete description of the experimental design, including a specification of the controlled conditions and how the controls were realized;

(*b*) A complete description of the methods of making observations and the adjustments, if any, to observed data.

(iii) *Econometric Studies.* (*a*) A presentation of the economic theory underlying the study;

(*b*) A complete description of the econometric model(s) and the reasons for each major assumption and specification;

(*c*) The definition of the variables selected and the justification for their selection;

(*d*) For any alternative model whose computed econometric results influenced the choice of the preferred model, a statement of the reasons for rejecting that alternative, an identification of any differences between that alternative and the preferred model with respect to variable definitions, equation forms, data, or estimation methods, and, upon request, the computed econometric results for that alternative;

(*e*) A reference to a detailed description in a text, manual, or technical journal for every econometric technique used in the estimation process and the reasons for selecting the technique, or, in the alternative, a description and analysis of the technique that is sufficient for a technical evaluation;

(*f*) Summary descriptions and source citations for all input data and, upon request, a complete listing of the data. Complete descriptions of any alterations or transformations made to the data as received from the original sources, and the reasons for making the alterations;

(*g*) A complete report of the econometric results including, where applicable:

(*1*) coefficient estimates

(*2*) standard errors and t-values,

(*3*) goodness-of-fit statistics,

(*4*) other appropriate test statistics,

(*5*) the variance/covariance matrix of the estimates,

(*6*) computed residuals for results computed from samples composed of fewer than 250 observations, and, upon request, other computed residuals;

(*h*) Descriptions of all statistical tests of hypotheses and the results of such tests;

(iv) *All other studies involving statistical methodology.* (*a*) The formula used for statistical estimates;

(*b*) The standard errors of each component estimated;

(*c*) Test statistics and the description of statistical tests and all related computations, and final results; and

(*d*) Summary descriptions of input data, and upon request the actual input data shall be made available at the offices of the Commission.

(3) *Computer analyses.* (i) In the case of computer studies or analyses which are being offered in evidence, or relied upon as support for other evidence, a foundation for the reception of such materials must be laid by furnishing a general description of the program that includes the objectives of the program, the processing tasks performed, the methods and procedures employed, and a listing of the input and output data and source codes (or a showing pursuant to paragraph (k)(3)(iii) of this section as to why such codes cannot be so furnished) and such description shall be furnished in all cases. For the purpose of completing such foundation, the following additional items shall be deemed presumptively necessary and shall be furnished upon request of a participant, the Commission, or the presiding officer, unless the presumption is overcome by an affirmative showing.

(*a*) For all input data, designations of all sources of such data, and explanations of any modifications to such data made for use in the program;

(*b*) Definitions of all input and output variables or sets of variables;

(*c*) A description of input and output data file organization;

(*d*) A machine-readable copy of all data bases;

(*e*) For all source codes, documentation sufficiently comprehensive and detailed to satisfy generally accepted software documentation standards[1] appropriate to the type of program and to its intended use in the proceeding;

(*f*) The source program in machine-readable form;

(*g*) All pertinent operating system and programming language manuals; and

(*h*) If the requested program is user interactive, a representative sample run, together with any explanation necessary to illustrate the response sequence.

(*i*) An expert on the design and operation of the program shall be provided at a technical conference to respond to any oral or written questions concerning information that is reasonably necessary to enable independent replication of the program output.

Paragraphs (k)(3)(i) (*d*) and (*f*) of this section shall be provided either in the form of magnetic tape or through access to a time-sharing service, at the option of the provider. Any machine-readable data file or program file so provided must be identified and described in accompanying hard-copy documentation. In addition, files in text format must be accompanied by hard-copy instructions for printing them. Files in machine code must be accompanied by hard-copy instructions for executing them

(*j*) Computer simulation models offered in evidence or relied upon as support for other evidence, shall be bound by all applicable provisions of paragraph (k)(3) of this section and the separate requirements of paragraph (k)(2) of this section, to the extent that portions of the simulation model utilize or rely upon such studies. Information that compares the simulation model output results to the actual phenomena being modelled using data other than those from which the model was developed, shall be separately identified and submitted as evidence supporting the test and validation of the simulation model separate statements concerning the model limitations, including limiting model design assumptions and range of data input utilized in model design, shall be provided. Where test and validation of the entire simulation model are not possible, test and validation information shall be provided for disaggregate portions of the model. If disaggregate testing and validation are not possible, separate statements to that effect and statements regarding operational experts' review of model validity shall be provided.

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[1] Examples of such standards include Federal Information Processing Standards Publication 38; ADP Operating Standards Handbook ADP-2, United States Postal Service, Management Information Systems Department, 1978; Computer Model Documentation Guide, NBS Special Publication 500-73, Sections II and III.

(ii) Upon timely and otherwise proper request of a participant, or sua sponte, the Commission or the Presiding Officer may rule that matters other than those listed in paragraphs (k)(3)(i) (*a*) through (*h*) of this section are necessary to establish the foundation for reception of the evidence concerned and must be furnished.

(iii) When the requestor is other than the Commission or the Presiding Officer, the cost of producing the material required in paragraph (k)(3)(i) (*d*), (*f*), and (*g*)of this section, shall be borne by the requesting party unless otherwise ordered, for good cause shown by the requestor. When the Commission or the Presiding Officer is the requestor, it may assume or equitably allocate such costs for good cause shown by the requestee.

(iv) If the recipient of a request for materials pursuant to this paragraph (k)(3) of this section asserts that compliance with the request would conflict with patent, copyright, trade secret or contract rights applicable to the requested material, the recipient shall immediately notify the requestor and the Presiding Officer. If valid, the Presiding Officer shall devise means of accommodating such rights. Such means may include protective orders, including access under protective conditions to the computer facilities of the recipient of a request, making material available for inspection, compensation, or other procedures, according to the nature of the right affected by compliance with this paragraph (k)(3) of this section. If the Presiding Officer determines that compensation is necessary to accommodate the affected right, the cost of compensation shall be borne in the same manner that paragraph (k)(3)(iii) of this section prescribes for bearing the costs referenced there. If such right cannot be accommodated by reasonable compensation, or by protective orders or other procedures, and, as a result, materials required by this paragraph (k)(3) of this section cannot be provided, the Presiding Officer shall determine, in his discretion, whether evidence that relies upon the materials not provided shall be admissible or afforded limited weight.

(4) *Expedition.* The offeror shall expedite responses to requests made pursuant to this section. Responses shall be served on the requesting party, and notice thereof filed with the Secretary in accordance with the provisions of § 3001.12, no later than 20 days after a request is made.

[36 FR 396, Jan. 12, 1971, as amended at 45 FR 65580, Oct. 3, 1980; 47 FR 12796, Mar. 25, 1982; 50 FR 43392, Oct. 25, 1985; 51 FR 8827, Mar. 14, 1986; 51 FR 14992, Apr. 22, 1986; 54 FR 35494, Aug. 28, 1989]

§ 3001.31a In camera orders.

(a) *Definition.* Except as hereinafter provided, documents and testimony made subject to *in camera* orders are not made a part of the public record, but are kept confidential, and only authorized parties, their counsel, authorized Commission personnel, and court personnel concerned with judicial review shall have access thereto. The right of the presiding officer, the Commission, and reviewing courts to disclose *in camera* data to the extent necessary for the proper disposition of the proceeding is specifically reserved.

(b) *In camera treatment of documents and testimony.* Presiding Officers shall have authority, but only in those unusual and exceptional circumstances when good cause is found on the record, to order documents or oral testimony offered in evidence whether admitted or rejected, to be placed *in camera.* The order shall specify the date on which *in camera* treatment expires and shall include: (1) A description of the documents and testimony; (2) a full statement of the reasons for granting *in camera* treatment; and (3) a full statement of the reasons for the date on which *in* *camera* treatment expires. Any party desiring, for the preparation and presentation of the case, to disclose *in camera* documents or testimony to experts, consultants, prospective witnesses, or witnesses, shall make application to the presiding officer setting forth the justification therefor. The presiding officer, in granting such application for good cause found, shall enter an order protecting the rights of the affected parties and preventing unnecessary disclosure of information. *In camera* documents and the transcript of testimony subject to an *in camera* order shall be segregated from the public record and filed in a sealed envelope, bearing the title and docket number of the proceeding, the notation *"In Camera* Record under § 3001.31a," and the date on which *in camera* treatment expires.

(c) *Release of in camera* information. In camera documents and testimony shall constitute a part of the confidential records of the Commission and shall be subject to the provisions of § 3001.42 of this chapter. However, the Commission, on its own motion or pursuant to a request, may make *in camera* documents and testimony available for inspection, copying, or use by any other governmental agency. The Commission shall, in such circumstrances, give reasonable notice of the impending disclosure to the affected party. However, such notice may be waived in extraordinary circumstances for good cause.

(d) *Briefing of in camera information.* In the submittal of proposed findings, briefs, or other papers, counsel for all parties shall make a good faith attempt to refrain from disclosing the specific details of *in camera* documents and testimony. This shall not preclude references in such proposed findings, briefs, or other papers to such documents or testimony including generalized statements based on their contents. To the extent that counsel consider it necessary to include specific details of *in camera* data in their presentations, such data shall be incorporated in separate proposed findings, briefs, or other papers marked "confidential," which shall be placed *in camera* and become a part of the *in camera* record.

[44 FR 33880, June 13, 1979, as amended at 48 FR 15901, Apr. 13, 1983]

§ 3001.32 Appeals from rulings of the presiding officer.

(a) *General policy.* The Commission will not review a ruling of the presiding officer prior to its consideration of the entire proceeding except in extraordinary circumstances. This section specifies the showing which participants must make in order to appeal interlocutory rulings.

(b) *Appeals certified by the presiding officer.* (1) Before the issuance of an initial decision pursuant to § 3001.39(a) or the certification of the record to the Commission pursuant to § 3001.38(a), rulings of the presiding officer may be appealed when the presiding officer certifies in writing that an interlocutory appeal is warranted. The presiding officer shall not certify an appeal unless the officer finds that (i) the ruling involves an important question of law or policy concerning which there is substantial ground for difference of opinion and (ii) an immediate appeal from the ruling will materially advance the ultimate termination of the proceeding or subsequent review will be an inadequate remedy.

(2) A request for the presiding officer to certify an appeal shall be made within 5 days after the presiding officer's ruling has been issued. The request shall set forth with specificity the reasons that a participant believes that an appeal meets the criteria of paragraphs (b)(1) (i) and (ii) of this section. Such requests shall also state in detail the legal, policy, and factual arguments supporting the participant's position that the ruling should be modified. If the appeal is from a ruling rejecting or excluding evidence, such request shall include a statement of the substance of the evidence which the participant contends would be adduced by the excluded evidence and the conclusions intended to be derived therefrom.

(3) The presiding officer may request responsive pleadings from other participants prior to ruling upon the request to certify an appeal.

(c) *Appeals not certified by the presiding officer.* If the presiding officer declines to certify an appeal, a participant who has requested certification may apply to the Commission for review within 10 days. Unless the Commission directs otherwise, its review of the application will be based on the record and pleadings filed before the presiding officer pursuant to paragraph (b) of this section.

(d) *Action by the Commission.* (1) The Commission may dismiss an appeal certified by the presiding officer if it determines that (i) the objection to the ruling should be deferred until the Commission's consideration of the entire proceeding or (ii) interlocutory review is otherwise not warranted or appropriate under the circumstances.

(2) Where the presiding officer has declined to certify an appeal, the Commission will not allow an application for review unless it determines (i) that the presiding officer should have certified the matter, (ii) that extraordinary circumstances exist, and (iii) that prompt Commission decision is necessary to prevent grave detriment to the public interest.

(3) The Commission may issue an order accepting an interlocutory appeal within 15 days after the presiding officer certifies the appeal or a participant files an application for review. If the Commission fails to issue such an order, leave to appeal from the presiding officer's interlocutory ruling shall be deemed to be denied. If the Commission issues an order accepting an appeal, it may rule upon the merits of the appeal in that order or at a later time.

(e) *Effect of appeals.* Unless the presiding officer or the Commission so orders, the certification of an appeal or the filing of an application for review shall not stay the proceeding or the effectiveness of any ruling.

(f) *Review at conclusion of proceeding.* If an interlocutory appeal is not allowed or requested, objection to the ruling may be raised on review of the presiding officer's initial decision, or, if the initial decision is omitted, at the conclusion of the proceeding.

(g) *Form, filing, and service of documents.* Requests for certification, applications for review, and any responses shall be in writing and shall be in conformity with §§ 3001.10 and 3001.11. They shall be filed and served pursuant to §§ 3001.9 and 3001.12.

[38 FR 4328, Feb. 13, 1973, as amended at 42 FR 8143, Feb. 9, 1977; 51 FR 8827, Mar. 14, 1986]

§ 3001.33 Depositions.

(a) *When permissible.* The testimony of a witness may be taken by deposition upon authorization by the Commission or the presiding officer on application of any participant before the hearing is closed. An authorization to take the deposition of a witness will be issued only if (1) the person whose deposition is to be taken would be unavailable at the hearing, or (2) the deposition is deemed necessary to perpetuate the testimony of the witness, or (3) the taking of the deposition is necessary to prevent undue and excessive expense to a participant and will not result in undue delay or an undue burden to other participants.

(b) *Application.* An application for authorization to take testimony by deposition shall be filed in duplicate with the Commission or the presiding officer and shall state (1) the name, identification, and post office address of the witness, (2) the subject matter of the testimony, (3) the time and place of taking the deposition, (4) the name, identification, and post office address of the officer before whom the deposition is to be taken, and (5) the reasons why the testimony of such witness should be taken by deposition.

(c) *Authorization.* If the application so warrants, the Commission or the presiding officer will issue and serve or cause to be served on the participants within a reasonable time in advance of the time fixed for taking testimony, an authorization for the taking of such testimony by deposition. Such authorization shall name the witness, and the time, place, and officer before whom the deposition shall be taken, and shall specify the number of copies of the deposition to be submitted to the Commission. The authorization may include such terms and conditions as the Commission or the presiding officer deems fair and reasonable.

(d) *Qualifications of officer before whom taken.* Such deposition may be taken before a presiding officer or other authorized representative of the Commission, or any officer, not being counsel or attorney for any participant or having an interest in the proceeding, authorized to administer oaths by the laws of the United States or of the place where the deposition is to be taken.

(e) *Oath and reduction to writing.* The officer before whom the deposition is to be taken shall put the witness on oath or affirmation and shall personally, or by some one acting under his direction and in his presence, record the examination of the witness. The examination shall be transcribed in the form specified in § 3001.10(a), signed by the witness, and certified in the usual form by the officer. The original of the deposition, together with the number of copies required by the authorization to be made by such officer, shall be forwarded by the officer to the Secretary by personal delivery or registered mail. Upon receipt the Secretary shall hold the original for use in the hearing upon request by any participant and shall make copies available for public inspection.

(f) *Scope and conduct of examination.* Unless otherwise directed in the authorization, the witness may be questioned regarding any matter which is relevant to the issues involved in the proceeding. Participants shall have the right of cross-examination and objection. In lieu of participation in the oral examination, participants may transmit written interrogatories to the officer who shall propound them to the witness.

(g) *Objections.* The officer before whom the deposition is taken shall not have the power to rule upon procedural matters or the competency, materiality, or relevancy of questions. Procedural objections or objections to questions of evidence shall be stated briefly and recorded in the deposition without argument. Objections not stated before the officer shall be deemed waived.

(h) *When a part of the record.* No portion of a deposition shall constitute a part of the record in the proceeding unless received in evidence by the presiding officer. If only a portion of the deposition is offered in evidence by a participant, any other participant may require him to introduce all of it which is relevant to the part introduced, and any participant may offer in evidence any other portions.

(i) *Fees.* Witnesses whose depositions are taken and the officer taking the same shall be entitled to the same fees as are paid for like services in the District Courts of the United States to be paid directly by the participant or participants on whose application the deposition was taken.

§ 3001.34 Briefs.

(a) *When filed.* At the close of the taking of testimony in any proceeding, the Commission or the presiding officer shall fix the time for the filing and service of briefs, giving due regard to the timely issuance of a recommended decision or advisory opinion to the Postal Service within the contemplation of sections 3641(a) and 3661 of the Act. In addition, subject to such consideration, due regard shall be given to the nature of the proceeding, the complexity and importance of the issues involved, and the magnitude of the record. In cases subject to a limitation on the time available to the Commission for decision, the Commission shall generally direct that each participant shall file a single brief at the same time. In cases where, because of the nature of the issues and the record or the limited number of participants involved, the filing of initial and reply briefs, or the filing of initial, answering, and reply briefs, will not unduly delay the conclusion of the proceeding and will aid in the proper disposition of the proceeding, the participants may be directed to file more than one brief and at different times rather than a single brief at the same time. The presiding officer or the Commission may also order the filing of briefs during the course of the proceeding.

(b) *Contents.* Each brief filed with the Commission shall be as concise as possible, within any page limitation specified by the Commission or the presiding officer, and shall include the following in the order indicated:

(1) A subject index with page references, and a list of all cases and authorities relied upon, arranged alpha-

betically, with references to the pages where the citation appears;

(2) A concise statement of the case from the viewpoint of the filing participant;

(3) A clear, concise and definitive statement of the position of the filing participant as to the proposals of the Postal Service, the subject matter of the complaint, or recommended decision, advisory opinion, or public report to be issued;

(4) A discussion of the evidence, reasons, and authorities relied upon with exact references to the record and the authorities; and

(5) Proposed findings and conclusions with appropriate references to the record or the prior discussion of the evidence and authorities relied upon.

(c) *Incorporation by references.* Briefs before the Commission or a presiding officer shall be completely self-contained and shall not incorporate by reference any portion of any other brief, pleading or document.

(d) *Excerpts from the record.* Testimony and exhibits shall not be quoted or included in briefs except for short excerpts pertinent to the argument presented.

(e) *Filing and service.* Briefs shall be filed in the form and manner and served as required by §§ 3001.9 to 3001.12.

[36 FR 396, Jan. 12, 1971, as amended at 38 FR 4328, Feb. 13, 1973; 51 FR 8827, Mar. 14, 1986]

§ 3001.35 Proposed findings and conclusions.

The Commission or the presiding officer may direct the filing of proposed findings and conclusions with a brief statement of the supporting reasons for each proposed finding and conclusion.

[38 FR 4329, Feb. 13, 1973; 51 FR 8827, Mar. 14, 1986]

§ 3001.36 Oral argument before the presiding or other designated officer.

In any case in which the presiding officer is to issue an initial or recommended decision, or another designated officer of the Commission is to issue a recommended decision, such officer may permit the presentation of oral argument before him when, in his opinion, time permits, and the nature of the proceedings, the complexity or importance of the issues of fact or law involved, and the public interest warrants his hearing such argument. Such officer shall determine the time and place for oral argument. He may specify the issue or issues on which oral argument is to be presented, the order in which the presentations shall be made, and the amount of time allowed each participant. A request for oral argument before the issuance of an intermediate decision shall be made during the course of the hearing on the record.

§ 3001.37 Oral argument before the Commission.

(a) *When ordered.* In any proceeding before the Commission for decision, the Commission, upon the request of any participant or on its own initiative, may order oral argument when, in the Commission's discretion, time permits, and the nature of the proceedings, the complexity or importance of the issues of fact or law involved, and public interest warrants such argument.

(b) *How requested.* Any participant in a proceeding before the Commission for decision may request oral argument before the Commission by filing a timely motion pursuant to § 3001.21. In a proceeding before the Commission on exceptions to an intermediate decision, such motion shall be filed no later than the date for the filing of briefs on exceptions. Motions requesting oral argument may be included in briefs or briefs on exceptions or in a separate document.

(c) *Notice of oral argument.* The Commission shall rule on requests for oral argument, and if argument is allowed, the Commission shall notify the participants of the time and place set for argument, the amount of time allowed each participant, and the issue or issues on which oral argument is to be heard. Unless otherwise ordered by the Commission, oral argument shall be limited to matters properly raised on the record and in the briefs before the Commission.

(d) *Use of documents at oral argument.* Charts, graphs, maps, tables and other written material may be presented to the Commission at oral argument only if limited to facts in the record of the case being argued and if copies of such documents are filed with the Secretary and served on all parties at least 7 days in advance of the argument. Enlargements of such charts, graphs, maps and tables may be used at the argument provided copies are filed and served as required by this paragraph.

§ 3001.38 Omission of intermediate decisions.

(a) *Basis of omission.* In any proceeding noticed pursuant to § 3001.17, the Commission, on the motion of any participant or on its own initiative, may direct the certification of the record to the Commission and omit any intermediate decision upon a finding on the record that due and timely execution of its functions imperatively and unavoidably so requires. In proceedings in which all participants concur in a request by any participant that any intermediate decision be omitted, the Commission shall direct the certification of the record to the Commission and forthwith render a final decision unless the Commission denies such request within 10 days next following its filing or referral by the presiding officer.

(b) *Requests for omission.* Requests for omission of the intermediate decision in any proceeding shall be made by motion pursuant to § 3001.21 or made orally on the record before the presiding officer who shall promptly refer the same to the Commission. Such requests shall specify (1) the concurrence of other parties and (2) whether opportunity for filing briefs or presenting oral argument to the Commission is desired or waived. Failure of any party to object to such request shall constitute a waiver of any objections.

§ 3001.39 Intermediate decisions.

(a) *Initial decision by presiding officer.* In any proceedings in which a Commissioner or hearing officer has presided at the reception of evidence, such presiding officer, as soon as practicable after the conclusion of the hearing and the filing of briefs, shall certify and file with the Secretary, a copy of the record of the hearing and his initial decision on the matters and issues presented for decision in such proceeding.

(b) *Tentative decision.* Prior to the issuance of an initial decision by the presiding officer, the Commission, with notice to the participants or by order in specific cases or by general rule for a class of cases, may direct the certification of the record to the Commission for the purpose of the issuance of a tentative decision. In such cases, the Commission may issue a tentative decision or require that the presiding officer or any designated responsible officer of the Commission recommend a decision.

(c) *Contents.* All intermediate decisions (initial, recommended or tentative) shall include (1) findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record, and (2) the appropriate recommended decision, advisory opinion or public report pursuant to the Act. An intermediate decision in a proceeding under section 3622 or 3623 of the Act shall include a statement specifically responsive to the criteria established under section 3622 or 3623 of the Act, as the case may be; and an intermediate decision in a proceeding under section 3661 of the Act shall include a determination of the question of whether or not the proposed change in the nature of postal service conforms to the policies established under the Act.

(d) *Service and Commission review.* All intermediate decisions shall be part of the record, shall be served on the participants to the proceeding by the Secretary pursuant to § 3001.12 and shall be subject to review by the Commission on its own initiative, or the filing of exceptions by the participants pursuant to § 3001.40.

(e) *Unavailability of presiding officer.* In any proceeding in which the intermediate decision is not omitted pursuant to § 3001.38, if a presiding officer becomes unavailable to issue an intermediate decision on a timely basis, the Commission shall, by a notice served on the participants require the record to be certified to it and it shall either designate a qualified responsible officer of the Commission to issue a recommended decision or will itself issued a tentative decision, as the Commission may deem appropriate.

(f) *Effect of intermediate decision.* Unless briefs on exceptions are filed to an intermediate decision pursuant to § 3001.40 or unless the Commission issues an order to review an intermediate decision on its own initiative, the intermediate decision shall become the final action of the Commission after 30 days from the date of issuance thereof. If briefs on exceptions are timely filed or the Commission initiates review on its own motion, the intermediate decision is stayed until further order of the Commission.

§ 3001.40 Exceptions to intermediate decisions.

(a) *Briefs on exceptions and opposing exceptions.* Any participant in a proceeding may file exceptions to any intermediate decision by filing a brief on exceptions with the Commission within 30 days after the date of issuance of the intermediate decision or such other time as may be fixed by the Commission. Any participant to a proceeding may file a response to briefs on exceptions within 20 days after the time limited for the filing of briefs on exceptions or such other time as may be fixed by the Commission. No further response will be entertained unless the Commission, upon motion for good cause shown or on its own initiative, so orders.

(b) *Filing and contents.* Briefs on exceptions and briefs opposing exceptions shall be filed in accordance with § 3001.34. In briefs on exceptions, the discussion of evidence, reasons and authorities shall be specifically directed to the findings, conclusions and recommendations in the intermediate decision to which exception is taken. Briefs on exceptions should not include a discussion of evidence and authorities on matters and issues to which no exception to the intermediate decision is taken. Briefs on exceptions and briefs opposing exceptions need not contain a statement of the case to the extent that it was correctly stated in either the intermediate decision or the brief on exceptions of another participant to which reference is made.

(c) *Failure to except results in waiver.* Any participant who fails to except or object to any part of an intermediate decision in its brief on exceptions may not thereafter raise such exceptions or objections which shall be deemed to have been waived.

(84 Stat. 759-761, 764; 39 U.S.C. 3603, 3622-3624, 3661, 3662)

[36 FR 396, Jan. 12, 1971, as amended at 38 FR 4329, Feb. 13, 1973]

§ 3001.41 Rulemaking proceedings.

(a) *General notice.* Before the adoption of any rule of general applicability, or the commencement of any hearing on any such proposed rulemaking, the Commission will cause general notice to be given by publication in the Federal Register, such notice to be published therein not less than 30 days prior to the date fixed for the consideration of the adoption of a proposed rule or rules or for the commencement of the hearing, if any, on the proposed rulemaking, except where a shorter period is reasonable and good cause exists therefor. However, where the Commission, for good cause, finds it impracticable, unnecessary, or contrary to the public interest to give such notice, it may proceed with the adoption of rules without notice by incorporating therein a finding to such effect and a concise statement of the reasons therefor. Advance notice shall not be required for rules subject to 5 U.S.C. 553(d).

(b) *Contents of notice.* The notice shall include (1) a statement of the time, place and nature of the public rulemaking proceedings; (2) reference to the legal authority under which the rule is proposed; and (3) either the terms or substance of the proposed rule or a description of the subjects and issues involved.

(c) *Participation.* After notice given as provided in paragraph (a) of this section, the Commission shall give interested persons an opportunity to participate in the rulemaking through submission of written data, views, or arguments with or without opportunity for oral presentation.

(d) *General statement as to basis and purpose.* After consideration of the relevant matter presented, the Commission shall incorporate in the rules adopted a concise general statement of their basis and purpose.

(e) *Exceptions.* Except when notice or hearing is required by statute, the Commission may issue at any time rules of organization, procedure or practice, or interpretive rules, or statements of policy, without notice or public procedure, and this section is not to be construed as applicable to the extent that there may be involved any military, naval or foreign affairs function of the United States, or any matter relating to the Commission's management or personnel, or to U.S. property, loans, grants, benefits, or contracts.

(84 Stat. 759-761, 764; 39 U.S.C. 3603, 3622-3624, 3661, 3662)

[36 FR 396, Jan. 12, 1971, as amended at 38 FR 4329, Feb. 13, 1973]

§ 3001.42 Public information and requests.

This section prescribes the rules governing: Publication of recommended decisions, advisory opinions, and public reports; and records of the Commission.

(a) *Notice and publication.* Service of intermediate and recommended decisions, advisory opinions and public reports upon parties to the proceedings is provided in §§ 3001.12(a) and 3001.39(d). Descriptions of the Commission's organization, its methods of operation, statements of policy and interpretations, procedural and substantive rules, and amendments thereto will be filed with and published in the FEDERAL REGISTER. Commission recommended decisions, advisory opinions and public reports, Commission orders, and intermediate decisions will be released to the press and made available to the public promptly.

(b) *Public records.* Except as provided in § 3001.31a of this chapter, the public records of the Commission include:

(1) All submittals and filings as follows:

(i) Requests of the Postal Service for recommended decisions or advisory opinions, public reports, complaints (both formal and informal), and other papers seeking Commission action;

(ii) Financial, statistical and other reports to the Commission, and other filings and submittals to the Commission in compliance with the requirements of any statute, Executive order, or Commission rule, regulation, or order;

(iii) All answers, replies, responses, objections, protests, motions, stipulations, exceptions, other pleadings, notices, depositions, certificates, proofs of service, transcripts, and briefs in any matter or proceeding;

(iv) All exhibits, attachments and appendices to, amendments and corrections of, supplements to, or transmittals or withdrawals of, any of the foregoing;

(v) Any Commission correspondence relating to any of the foregoing.

(2) All other parts of the formal record in any matter or proceeding set for formal or statutory hearing and any Commission correspondence related thereto. "Formal record" includes in addition to all the filings and submittals, any notice or Commission order initiating the matter or proceeding, and, if a hearing is held, the following: the designation of the presiding officer, transcript of hearings, all exhibits received in evidence, offers of proof, motions, stipulations, proofs of service, referrals to the Commission and determination made by the Commission thereon, certifications to the Commission, and anything else upon which action of the presiding officer or the Commission may be based; it does not include any unaccepted offer of settlement made by a party in the course of a proceeding and not formally submitted to the Commission.

(3) Any proposed testimony or exhibit filed with the Commission but not yet offered or received in evidence.

(4) All presiding officer actions and all presiding officer correspondence and memoranda to or from others except within his own office.

(5) All Commission orders, notices, findings, determinations, and other actions in any matter or proceeding and all Commission minutes which have been approved.

(6) All Commission correspondence relating to any furnishing of data or information by the Postal Service.

(7) Commission correspondence with respect to the furnishing of data, information, comments, or recommendations to or by another branch, department, or agency of the Government where furnished to satisfy a specific requirement of a statute or where made public by that branch, department or agency.

(8) Commission correspondence and reports on legislative matters under consideration by the Office of Management and Budget or Congress but only if and after made public or released for publication by that Office or the Commission or Member of Congress involved.

(9) Commission correspondence on the interpretation or applicability of any statute, rule, regulation, recommended decision, advisory opinion, or public report issued or administered by the Commission and letters of opinion on that subject signed by the General Counsel and sent to others than the Commission, a Commissioner, or any of the staff.

(10) Copies of all filings by the Commission, and all orders, judgments, decrees, and mandates directed to the Commission in Court proceedings involving Commission action and all correspondence with the courts or clerks of court.

(11) The Commission's administrative and operating manuals as issued.

(12) All other records of the Commission except for those that are:

(i)(*a*) Specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (*b*) are in fact properly classified pursuant to such Executive order;

(ii) Related solely to the internal personnel rules and practices of the Commission;

(iii) Specifically exempted from disclosure by statute;

(iv) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(v) Interagency or intra-agency memoranda or letters which would not be available by law to a party other than an agency in litigation with the Commission;

(vi) Personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(vii) Investigatory records compiled for law enforcement purposes, to the extent specified in 5 U.S.C. 552(b)(7).

(13) The following are examples of information which is not part of the public records of the Commission:

(i) Written communications between or among the Commission, members of the Commission, the Secretary, and expressly designated members of the staff while particularly assigned, in accordance with all applicable legal requirements, to aid the Commission in the drafting of any recommended decision, advisory opinion or public report and findings, with or without opinion, or report in any matter or proceeding;

(ii) Unaccepted offers of settlement in any matter or proceeding unless or until made public by act of the offeror.

(c) *Requests for Records.* Requests for records shall be in writing and shall reasonably describe the records sought. Requests shall be addressed to the Secretary at the offices of the Commission. Requests which rely upon the Freedom of Information Act, 5 U.S.C. 552, shall bear the caption "Freedom of Information Act Request." Within 10 days (excluding Saturdays, Sundays, and legal public holidays) after receipt of a request for a Commission record, the Secretary shall:

(1) *General.* Inform the requestor where and when the records may be inspected and, if ascertainable, of the charge for furnishing copies; or

(2) *Deny the request.* A denial shall be in writing; it shall cite the specific exemption or exemptions under these rules authorizing the withholding of the records sought and shall inform the requestor that he may, within 20 days, appeal the denial to the Commission. Appeals to the Commission shall be in writing. The Commission may also review any decision of the Secretary on its own initiative. The Commission will consider all appeals and either grant or deny them in writing, within 20 days (excluding Saturdays,

Sundays and legal public holidays) of the date the appeal is received. If on appeal the denial of the request for records is upheld, the Commission shall notify the person making such request of the provisions for judicial review of that determination pursuant to 5 U.S.C. 552(c).

(3) *Extensions of time.* The time period for decision on application pursuant to paragraph (c) of this section may be extended up to 10 working days by the Secretary and the time period for decisions on appeals may be extended up to 10 working days by the Commission, provided, however, that the total period of extensions may not exceed 10 working days. Such extensions shall be by written notice determining that an extension is warranted by unusual circumstances as specified in 5 U.S.C. 552(a)(6)(B).

(4) *Fees—general information.* Documents furnished pursuant to the Freedom of Information Act, as amended, are subject to fees governed by the following provisions. As used herein,

(i) "Direct costs" means expenditures the Commission actually incurs in searching for, duplicating, and, where applicable, reviewing documents to respond to a request. They include (without limitation) the salary of the employee performing work (the basic pay rate of such employee plus 16 percent to cover benefits) and the cost of operating required machinery.

(ii) "Search" means all time spent looking for material responsive to a request, including identification of pages or lines within documents. The term covers both manual and computerized searching.

(iii) "Duplication" means making copies of documents necessary to respond to a request. Such copies may be paper, microform, audiovisual, or machine-readable.

(iv) "Review" means examining documents located in response to a commercial-use request to determine whether any porton is exempt from mandatory disclosure, and processing or preparing documents for release, but not determination of general legal or policy issues regarding application of exemptions.

(v) A "commercial use" request is a request from or on behalf of one seeking information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or person on whose behalf the request is made. In determining the applicability of this term, the use to which a requester will put the document is considered first; where reasonable doubt exists as to the use, the Commission may seek clarification before assigning the request to a category.

(vi) An "educational institution" is a preschool, a public or private elementary or secondary school, an institution of graduate or undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(vii) A "noncommercial scientific institution" is an institution, not operated on a "commercial" basis (as defined above), which is operated solely for the purpose of conducting scientific research whose results are not intended to promote any particular product or industry.

(viii) A "representative of the news media" is any person actively gathering news for an entity organized and operated to publish or broadcast news to the public. "News" means information that concerns current events or would be of current interest to the public. Freelance journalists may be regarded as working for a news medium if they demonstrate (for example, by a publication contract or a past record of publication) a solid basis for expecting publication through such organization even though not actually employed by it.

Except in the case of commercial-use requesters, the first 100 pages of duplication and the first two hours of search time will be provided without charge. A "page" for these purposes is a letter- or legal-size sheet, or the equivalent amount of information in a medium other than paper copy. "Search time" for these purposes refers to manual searching; if the search is performed by computer, the amount not charged for will be the search cost equivalent to two hours' salary of the person performing the search. No requester will be charged a fee when the cost of collecting the fee would equal or exceed the fee itself. In determining whether cost of collection would equal or exceed the fee, the allowance for two hours' search or 100 pages of duplication will be made before comparing the remaining fee and the cost of collection. Documents will be provided without charge when disclosure of the information would be in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(5) *Fees—schedule; administrative provisions.* Fees will be charged in accordance with the following provisions:

(i) The level of fee charged depends on the category of requester:

(*a*) A request appearing to be for commercial use will be charged the full direct costs of searching for, reviewing, and duplicating the records sought.

(*b*) A request from an educational or noncommercial scientific institution will be charged for the cost of duplication only (excluding charges for the first 100 pages). To be eligible for this category, a requester must show that the request is made under the auspices of a qualifying institution and that the records are not sought for commercial use but are in furtherance of scholarly (in the case of educational institutions) or scientific (in the case of noncommercial scientific institutions) research.

(*c*) A request from a representative of the news media will be charged the cost of duplication only (excluding charges for the first 100 pages).

(*d*) A request from any other requester will be charged the full direct cost of searching for and duplicating records responsive to the request, except that the first 100 pages of duplication and the first two hours of search will be furnished without charge.

(*e*) A request from a record subject for records about himself or herself filed in a Commission system of records will be charged fees under the Privacy Act of 1974 (which permits charges only for duplication).

(ii) Fees shall be calculated as follows:

(*a*) *Manual search:* At the salary rate (basic pay plus 16 percent) of the employee(s) making the search. Search time will be charged for even if the Commission fails to locate records or if records located are found exempt from disclosure.

(*b*) *Computer search:* At the actual direct cost of providing the search, including computer search time directly attributable to searching for records responsive to the request, runs, and operator salary apportionable to the search.

(*c*) *Review (commercial-use requests):* At the salary rate (basic pay plus 16 percent) of the employee(s) conducting the review. Only the review necessary at the initial administrative level to determine the applicability of any exemption, and not review at the administrative appeal level of an exemption already applied, will be charged for.

(*d*) *Duplication:* At 15 cents per page for paper copy, which the Commission has found to be the reasonable direct cost thereof. For copies of records prepared by computer (such as tapes or printouts), the actual cost of production, including operator time, will be charged.

(*e*) *Additional services:* Postage, insurance, and other additional services that may be arranged for by the requester will be charged at actual cost.

(iii) (*a*) Should it reasonably appear that a requester, or a group of requesters, have attempted to evade fees by breaking down a request into a series of requests, the Commission will aggregate the separate requests. The period of time within which such multiple requests are filed will be a major consideration in making such a determination. However, multiple requests from one requester covering unrelated subjects will not be aggregated.

(*b*) Interest at the rate prescribed in 31 U.S.C. 3717 will be charged on unpaid fee bills, starting on the 31st day after the bill was sent. Receipt of a fee by the Commission, whether processed or not, will stay the accrual of interest.

(*c*) Advance payment may be required only when the allowable fees are likely to exceed $250, in which case advance payment in part or in full may be required of requesters with no history of prompt payment, and satisfactory assurance of payment from requesters with such history; or when the requester has previously failed to pay a fee timely (within 30 days of the billing date), in which case the Commission may require full payment of the amount owed, plus applicable interest, or a demonstration that the fee has in fact been paid, together with full advance payment of the estimated fee. When advance payment is required, the administrative time limits prescribed in subsection (a)(6) of the Freedom of Information Act (10 working days from receipt of initial requests, 20 working days from receipt of appeals of initial denials, and any permissible extensions of these limits) begin only after such payment has been received.

(d) *Procedure in event of subpoena.* If an officer or employee of the Commission is served with a subpoena duces tecum, material which is not part of the public files and records of the Commission shall be produced only as authorized by the Commission. Service of such a subpoena shall immediately be reported to the Commission with a statement of all relevant facts. The Commission will thereupon enter such order or give such instructions as it deems advisable.

(84 Stat. 759-761, 764; 39 U.S.C. 3603, 3622-3624, 3661, 3662)

[38 FR 4329, Feb. 13, 1973, as amended at 40 FR 6972, Feb. 18, 1975; 42 FR 25729, May 19, 1977; 44 FR 33881, June 13, 1979; 52 FR 13443, 13444, Apr. 23, 1987]

§ 3001.42a Protection of trade secrets and commercial or financial information.

This section describes the procedures for evaluating Freedom of Information Act requests for information provided to the Commission by a submitter who believes it to be exempted from disclosure by 5 U.S.C. 552(b)(4). Protection of information made available pursuant to proceedings subject to these rules, 39 CFR Part 3001, including information provided pursuant to that subpart requiring the filing of periodic reports, is provided upon request to the Commission as described in rule 3001.31(a). Other information submitted to the Commission which the submitter believes to be a trade secret or commercial or financial information privileged or confidential and thereby exempt from Freedom of Information Act disclosure under 5 U.S.C. 552(b)(4), should be accompanied by a brief written statement of why that material is exempt. When a request pursuant to rule § 3001.42(c) is made for information so designated, the Secretary promptly will notify the submitter, and provide an opportunity for filing an additional explanation of why the material should not be disclosed prior to decision on that request.

[47 FR 55393, Dec. 9, 1982]

§ 3001.43 Public attendance at Commission meetings.

(a) *Open Commission meetings.* (1) Commissioners shall not jointly conduct or dispose of agency business other than in accordance with this section. Except as provided in paragraph (c) of this section, every portion of every meeting of the Commission shall be open to public observation. Access to documents being considered at Commission meetings shall be obtained in the manner set forth in § 3001.42.

(2) Members of the public may not participate in open meetings. They may record the proceedings, provided they use battery-operated recording devices at their seats. Cameras may be used by observers to photograph proceedings, provided it is done from their seats and no flash or lighting equipment is used. Persons may electronically record or photograph a meeting, as long as such activity does not impede or disturb the members of the Commission in the performance of their duties, or members of the public attempting to observe, or to record or photograph, the Commission meeting.

(b) *Physical arrangements for open meetings.* The Secretary shall be responsible for seeing that ample space, sufficient visibility, and adequate acoustics are provided for public observation of the Commission meetings.

(c) *Closed Commission meetings.* Except in a case where the Commission finds that the public interest requires otherwise, the second sentence of paragraph (a) shall not apply to any portion of a Commission meeting, and the requirements of paragraphs (d) and (e) shall not apply to any information pertaining to such meeting otherwise required by this section to be disclosed to the public, where the Commission properly determines that such portion or portions of its meetings or the disclosure of such information is likely to

(1) Disclose matters that are (i) specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign policy and (ii) in fact properly classified pursuant to such Executive order;

(2) Relate solely to the internal personnel rules and practices of the Commission;

(3) Disclose matters specifically exempted from disclosure by statute (other than section 552 of title 5), provided that such statute (i) requires that the matter be withheld from the public in such a manner as to leave no discretion on the issue, or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Involve accusing any person of a crime, or formally censuring any person;

(6) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(7) Disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would (i) interfere with enforcement proceedings, (ii) deprive a person of a right to a fair trial or an impartial adjudication, (iii) constitute an unwarranted invasion of personal privacy, (iv) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (v) disclose investigative techniques and procedures, or (vi) endanger the life or physical safety of law enforcement personnel;

(8) Disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

(9) Disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed Commission action, except that paragraph (c)(9) shall not apply in any instance where the Commission has already disclosed to the public the content or nature of its proposed action, or where the Commission is required by law to make such disclosure on its own initiative prior to taking final Commission action on such proposal; or

(10) Specifically concern the Commission's issuance of a subpoena or the Commission's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct or disposition by the Commission of a particular case of formal Commission adjudication pursuant to the procedures in section 554 of title 5 or otherwise involving a determination on the record after opportunity for a hearing as provided by section 3624(a) of title 39.

(d) *Procedures for closing meetings.* (1) Action under paragraph (c) of this section shall be taken only when three Commissioners vote to take such action. A separate vote of the Commissioners shall be taken with respect to each agency meeting a portion or portions of which are proposed to be closed to the public pursuant to paragraph (c) of this section, or with respect to any information which is proposed to be withheld under paragraph (c) of this section. A single vote may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed to the public, or with respect to any information concerning such series of meetings, so long as each meeting in such series involves the same particular matters and is scheduled to be held no more than 30 days after the initial meeting in such series. The vote of each Commissioner participating in such vote shall be recorded and no proxies shall be allowed.

(2) Whenever any person whose interests may be directly affected by a portion of a meeting requests that the Commission close such portion to the public for any of the reasons referred to in paragraph (c) (5), (6), or (7) of this section, the Commission upon request of any one of its members, shall vote by recorded vote whether to close such meeting.

(3) Within 1 day of any vote taken pursuant to paragraph (d)(1) or (2) of this section, the Commission shall make publicly available a written copy of such vote reflecting the vote of each member on the question. If a portion of a meeting is to be closed to the public, the Commission shall, within 1 day of the vote taken pursuant to paragraph (d)(1) or (2) of this section, make publicly available a full written explanation of its action closing the portion together with a list of all persons expected to attend the meeting and their affiliation.

(4) Any person may protest a Commission decision to hold a closed meeting under paragraph (d)(1) or (2) of this section by filing a motion to open the meeting. Such motion shall be addressed to the Commission and shall set forth with particularity the statutory or other authority relied upon, the reasons for which the movant believes the meeting should not be closed, and the reasons for which the movant believes that the public interest requires the meeting to be open. Such motion shall be filed with the Secretary no later than 24 hours prior to the time for which the closed meeting is scheduled.

(5) The Commission has determined that a majority of its meetings may be closed to the public pursuant to paragraph (c)(4), (8) or (10) of this section or any combination thereof. Therefore, pursuant to 5 U.S.C. 552b(d)(4), Commission meetings shall be closed to the public pursuant to paragraph (c)(4), (8) or (10) of this section or any combination thereof when three Commissioners vote by recorded vote at the beginning of such meeting, or portion thereof, to close the exempt portion or portions of the meeting, and a copy of such vote, reflecting the vote of each Commissioner on the question, is made available to the public. The provisions of paragraphs (d) (1), (2), (3), and (e) of this section shall not apply to any portion of a meeting to which paragraph (d)(5) of this section applies: Provided, that the Commission shall, except to the extent that such information is exempt from disclosure under the provisions of paragraph (c) of this section, provide the public with public announcement of the time, place, and subject matter of the meeting and of each portion thereof at the earliest practicable time.

(e) *Scheduling and public announcement.* (1) In the case of each meeting, the Commission shall make public announcement, at least 1 week before the meeting, of the time, place, and subject matter of the meeting, whether it is to be open or closed to the public, and the name and phone number of the official designated by the Commission to respond to requests for information about the meeting. Such announcement shall be made unless three Commissioners determine by a recorded vote that Commission business requires that such meeting be called at an earlier date, in which case the Commission shall make public announcement of the time, place, and subject matter of such meeting, and whether open or closed to the public, at the earliest practicable time.

(2) The time or place of a meeting may be changed following the public announcement required by paragraph (e)(1) of this section only if the Commission publicly announces such change at the earliest practicable time. The subject matter of a meeting, or the determination of the Commission to open or close a meeting, or a portion of a meeting, to the public may be changed following the public announcement required by paragraph (e)(1) only if (i) three Commissioners determine by a recorded vote that Commission business so requires and that no earlier announcement of the change was possible, and (ii) the Com-

mission publicly announces such change and the vote of each Commissioner upon such change at the earliest practicable time.

(3) Immediately following each public announcement required by paragraph (e) of this section, notice of the time, place, and subject matter of a meeting, whether the meeting is open or closed, any change in one of the preceding, and the name and phone number of the official designated by the Commission to respond to requests for information about the meeting, shall also be submitted for publication in the FEDERAL REGISTER.

(4) The public announcement required by this section may consist of the Secretary.

(i) Publicly posting a copy of the document in the Office of Public Information of the Commission at 2000 L Street NW., Room 500, Washington, DC 20268;

(ii) Mailing a copy to all persons whose names are on a mailing list maintained for this purpose;

(iii) Operating a recorded telephone announcement, giving the announcement; and

(iv) Any other means which the Secretary believes will serve to further inform any persons who might be interested.

(f) *Certification of closed meetings; transcripts, electronic recordings, and minutes.* (1) Before any meeting to be closed pursuant to paragraphs (c) (1) through (10) of this section, the General Counsel of the Commission, or in the General Counsel's absence, the senior advisory Assistant General Counsel available, should publicly certify that, in his or her opinion, the meeting may be closed to the public and shall state each relevant exemptive provision. A copy of such certification, together with a statement from the presiding officer of the meeting setting forth the time and place of the meeting, and the persons present, shall be retained by the Commission. The Commission shall maintain a complete transcript or electronic recording adequate to record fully the proceedings of each meeting, or portion of a meeting, closed to the public, except that in the case of a meeting, or portion of a meeting, closed to the public pursuant to paragraph (c)(8) or (10) of this section; the Commission shall maintain either such a transcript or recording, or a set of minutes. Such minutes shall fully and clearly describe all matters discussed and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of the views expressed on any item and the record of any rollcall vote (reflecting the vote of each Commissioner on the question). All documents considered in connection with any action shall be identified in such minutes.

(2) The Commission shall make promptly available to the public, in a place easily accessible to the public, the transcript, electronic recording, or minutes (as required by paragraph (f)(1) of this section) of the discussion of any item on the agenda, or of any item of the testimony of any witness received at the meeting, except for such item or items of such discussion or testimony as the Commission determines by a majority vote of all its members (i) contains information which may be withheld under paragraph (c) of this section, and (ii) is not required by the public interest to be made available. Copies of such transcript, or minutes, or a transcription of such recording disclosing the identity of each speaker, shall be furnished to any person at the actual cost of duplication or transcription. The Commission shall maintain a complete verbatim copy of the transcript, a complete copy of the minutes, or a complete electronic recording of each meeting, or portion of a meeting, closed to the public, for a period of at least 2 years after such meeting, or until 1 year after the conclusion of any Commission proceeding with respect to which the meeting or portion was held, whichever occurs later.

(g) *Requests to open or close Commission meetings.* (1)(i) Any person may request in writing that the Commission open to public observation discussion of a matter which it has earlier decided to close.

(ii) Such requests shall be captioned "Request to open ——— (date) Commission meeting on item ——— (number or description)." The request shall state the reason(s) therefor, the name and address of the person making the request and, if desired, a telephone number.

(iii) Ten copies of such requests must be received by the Office of the Secretary no later than three working days after the issuance of the Notice of Meeting to which the request pertains. Requests received after that time will be returned to the requester with a statement that the request was untimely received and that copies of any nonexempt portions of the transcript or minutes for the meeting in question will ordinarily be available in the Office of Public Information ten working days after the meeting.

(2)(i) Any person whose interests may be directly affected may request in writing that the Commission close to public observation discussion of a matter which it has earlier decided to open as provided for in paragraph (d)(2) of this section.

(ii) Such requests shall be captioned "Request to Close ——— (date) Commission meeting on item ——— (number or description)," shall state the reason(s) therefor, the name and address of the person making the request and, if desired, a telephone number.

(iii) Ten copies of such requests should be filed with the Office of the Secretary as soon as possible after the issuance of the Notice of Meeting to which the request pertains. A single copy of the request will be accepted. Requests to close meetings must be received by the Office of the Secretary no later than the time scheduled for the meeting to which such request pertains.

(3) The Secretary shall retain one copy of timely requests and forward one copy to each Member, one copy to the interested Office, and two copies to the Docket Section, one for entry in the appropriate docket file, if any, and one to be posted on the Public Notice Board located in that section as an attachment to the Notice of Meeting to which it pertains.

(4) Pleadings replying to requests to open or close shall not be accepted.

(5) Any Member may require that the Commission vote upon the request to open or close. If the request is supported by the votes of a majority of the agency membership, notice of change in meeting shall be issued and the Secretary shall immediately notify the requester and, before the close of business the next working day, have posted such vote and other material required by paragraphs (d) and (e) of this section on the Commission's Public Notice Board.

(6) If no Commission Member requests that a vote be taken on a request to open or close a Commission meeting, the Secretary shall by the close of the next working date after the meeting to which such request pertains certify that no vote was taken. The Secretary shall forward one copy of that certification to the requester and two copies of that certification to the Docket Section, one to be placed in the appropriate Docket file, if any, and one to be posted on the Public Notice Board, where it will be displayed for one week.

[42 FR 13290, Mar. 10, 1977, as amended at 42 FR 25729, May 19, 1977]

Subpart B—Rules Applicable to Requests for Changes in Rates or Fees

§ 3001.51 Applicability.

The rules in this subpart govern the procedure with regard to requests of the Postal Service pursuant to section 3622 of the Act that the Commission submit a recommended decision on changes in a rate or rates of postage or in a fee or fees for postal service if the Postal Service determines that such changes would be in the public interest and in accordance with the policies of the Act. The Rules of General Applicability in Subpart A of this part are also applicable to proceedings on requests subject to this subpart.

§ 3001.52 Filing of formal requests.

Whenever the Postal Service determines to request that the Commission submit a recommended decision on changes in rates or fees subject to this subpart, the Postal Service shall file with the Commission a formal request for a recommended decision. Such request shall be filed in accordance with the requirements of §§ 3001.9 to 3001.11 and 3001.54. Within 5 days after the Postal Service has filed a formal request for a recommended decision in accordance with this subsection, the Secretary shall lodge a notice thereof with the Director of the Federal Register for publication in the FEDERAL REGISTER.

[38 FR 4330, Feb. 13, 1973, as amended at 51 FR 8827, Mar. 14, 1986]

§ 3001.53 Filing of prepared direct evidence.

Simultaneously with the filing of the formal request for a recommended decision under this subpart, the Postal Service shall file all of the prepared direct evidence upon which it proposes to rely in the proceeding on the record before the Commission to establish that the proposed changes or adjustments in rates or fees are in the public interest and are in accordance with the policies and the applicable criteria of the Act. Such prepared direct evidence shall be in the form of prepared written testimony and documentary exhibits which shall be filed in accordance with § 3001.31.

§ 3001.54 Contents of formal requests.

(a) *General requirements.* (1) Each formal request filed under this subpart shall include such information and data and such statements of reasons and bases as are necessary and appropriate fully to inform the Commission and the parties of the nature, scope, significance and impact of the proposed changes or adjustments in rates or fees and to show that the changes or adjustments in rates or fees are in the public interest and in accordance with the policies of the Act and the applicable criteria of the Act. To the extent information is available or can be made available without undue burden, each formal request shall include the information specified in paragraphs (b) through (r) of this section. If the required information is set forth in the Postal Service's prepared direct evidence, it shall be deemed to be part of the formal request without restatement.

(2) If any information required by paragraphs (b) through (r) of this section is not available and cannot be made available without undue burden, the request shall provide where reference is made to this paragraph, in lieu of such information, a statement explaining with particularity:

(i) The information which is not available or cannot be made available without undue burden;

(ii) The reason or reasons that each such item of information is not available and cannot be made available without undue burden;

(iii) The steps or actions which would be needed to make each such item of information available, together with an estimate of the time and expense required therefor;

(iv) Whether it is contemplated that each such item of information will be supplied in the future and, if so, at what time; and

(v) Whether reliable estimates are available where such information cannot be furnished and, if so, the specifics of such estimates.

(3) The provisions of paragraph (a)(2) of this section for the Postal Service to include in its formal request certain alternative information in lieu of that specified by paragraphs (b) through (r) of this section are not in derogation of the Commission's and the presiding officer's authority, pursuant to §§ 3001.23 through 3001.28, respecting the provision of information at a time following receipt of the formal request.

(4) The Commission may request information in addition to that required by paragraphs (b) through (r) of this section.

(b) *Rates and standards information.* (1) Every formal request shall include schedules of the then effective rate or rates of postage and fee or fees for all postal services, and, arranged in legislative format, schedules of the rate or rates of postage and fee or fees for all postal services proposed by the Postal Service, as they would appear in the Domestic Mail Classification Schedule. The schedules shall show the full rate and where applicable the phased rate under section 3626 of the Act and any proposed adjustment to such phased rates under section 3627 of the Act indicated by circumstances known at the time of filing.

(2) The schedules required by paragraph (b)(1) of this section shall, for all classes and subclasses of mail and

service, be in summary fashion and tariff-like form. (E.g., there shall be a specification of those rules, regulations and practices which establish the conditions of mailability and the standards of service.) As a part thereof, the schedules shall specifically be addressed to such functions as mail pickup and delivery, processing and other similar functions.

(3) Subject to paragraph (a)(2) of this section, the schedules required by paragraph (b)(1) of this section shall also contain a statement identifying the degree of economic substitutability between the various classes and subclasses, e.g., a description of cross-elasticity of demand as between various classes of mail.

(4) Subject to paragraph (a)(2) of this section, the schedules required by paragraph (b)(1) of this section shall be accompanied by an identification of all nonpostal services.

(c) *Mail characteristics.* Subject to paragraph (a)(2) of this section, every formal request shall include an identification of the characteristics of the mailer and recipient, and a description of the contents of items mailed within the various classes and subclasses of mail and service.

(d) *Physical attributes of mail.* Subject to paragraph (a)(2) of this section, every formal request shall include an identification of the physical attributes of the items mailed by class and subclass, including shape, weight, and distance.

(e) *Special service arrangements.* Subject to paragraph (a)(2) of this section, every formal request shall contain, to the extent the following information is not expressly included under paragraph (b)(2) of this section, a summary statement describing special service arrangements provided to, or requested or required of, mailers by the Postal Service which bear upon the cost of service or the value of the mail service to both the sender and the recipient, e.g., services relating to mailer preparations in excess of requirements specified by the Postal Service Manual, pick-up and delivery, expedited or deferred processing, and other similar activities performed.

(f) *Total functionalized accrued costs.* (1) Subject to paragraph (a)(2) of this section, every formal reques shall set forth the total actual accrue costs during the most recent fisca year for which they are reasonabl available. In the event final tota actual accrued costs are not yet available for the fiscal year immediatel preceding the fiscal year in which th filing is made, a preliminary or pr forma statement of such actual accrued costs shall be furnished. An preliminary statement shall use, as appropriate, quarterly or accountin period reports for the preceding fisca year. A final complete statement sha be substituted for any preliminar statement when the former become available.

(2) Subject to paragraph (a)(2) o this section, every formal request sha also set forth (i) the estimated tot accrued costs of the Postal Service fo the fiscal year in which the filing made and (ii) the estimated total a crued costs of the Postal Service specified in section 3621 of the A which form the basis for propose change in rates or fees. Estimated a crued costs referred to in paragrap (f)(2)(ii) of this section shall be for fiscal year beginning not more than months subsequent to the filing da of the formal request. These two es mates of accrued costs shall be calc lated on two bases: First, assuming th prefiling rates and fees and, secon assuming the suggested rates and fee Estimated accrued costs shall be accompanied by an explanation of th methods and procedures used for co projections. The analyses of estimate costs shall include, but need not limited to:

(*a*) An explanation of the projectio of total volumes;

(*b*) An explanation of the effect the projected volume levels on es mated total costs;

(*c*) The specification of the cost sa ings which will be realized from gai and improvements in total productiv ty, indicating such factors as ope ational and technological advanc and innovations; and

(*d*) The identification of abnorm costs which are expected to be curred in the forecasted test period.

(3) Each cost presentation requir by paragraphs (f)(1) and (2) of th

section shall, subject to paragraph (a)(2) of this section:

(i) Show operating costs in sufficient detail as to the accounting and functional classifications and with such reasonable explanation so that the actual or estimated amount for each item of expense may be readily understood;

(ii) State and fully explain the amounts included for:

(*a*) Depreciation on capital facilities and equipment;

(*b*) Debt service;

(*c*) Contingencies; and

(*d*) Extraordinary or nonrecurring expenses;

(iii) Assign and distribute costs to each of the functions comprising the mail process. Such presentations shall include:

(*a*) An itemization of costs by the major accounts as reflected by the Service's books of accounts for all cost segments, such as postmasters, supervisors, etc.;

(*b*) An itemization of costs by functions such as collection, acceptance, general overheads, etc.;

(*c*) An assignment and distribution of the costs by account, exemplified in paragraph (f)(3)(iii) (*a*) of this section, together with related mail volumes, to the functions exemplified in paragraph (f)(3)(iii) (*b*) of this section;

(*d*) An assignment and distribution of the costs by account, together with related mail volumes, to such subfunctions within each category for which information is available or can be developed; and

(*e*) An explanation of the method by which the costs by accounts are assigned and distributed to functions.

(g) *Costs of prior fiscal years.* Subject to paragraph (a)(2) of this section, every formal request shall present the total actual accrued costs for each fiscal year since the last filing pursuant to this section. Such submission should be in a form as nearly consistent as possible with the filing under paragraph (f) of this section, together with explanations of any departures from such form and the effect of such departures.

(h) *Separation, attribution, and assignment of certain costs.* (1) Every formal request shall separate the Service's actual and estimated total costs, for the fiscal years specified in paragraph (f) of this section, as between postal services (including international mail) and nonpostal services. The presentation shall show the methodology for separating postal costs as between postal services and nonpostal services, and shall be in sufficient detail to allow a determination that no nonpostal costs have been assigned or allocated to postal services.

(2) Subject to paragraph (a)(2) of this section, the costs for postal services, as set forth by functions pursuant to paragraph (f), shall be separated as between:

(i) Those direct costs which can be attributed to each class of mail or type of mail service;

(ii) Those indirect costs which can be attributed to each class of mail or type of mail service;

(iii) Any other costs of the Service which can be reasonably assigned to each class of mail or type of mail service; and

(iv) Any costs which cannot be attributed or reasonably assigned.[*]

(3) The methodology used to derive the costs requested in paragraphs (h)(2) (i) through (iv) of this section shall be set forth in detail.

(4) The attributable and other costs reasonably assignable as provided in paragraphs (h)(2) (i) through (iii) of this section shall separately be attributed to mail classes, subclasses, special services, and, to the extent practical, rate categories of mail service. The submission shall identify the methodology used to attribute or assign each type of such costs and, subject to paragraph (a)(2) of this section, shall also

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[*] In his initial decision in Docket R71-1 the presiding officer noted two possible interpretations of 39 U.S.C. 3622(b)(3)—first, that all costs are either "attributable" or "reasonably assignable" and, second, that there are some "remaining costs which cannot be attributed or reasonably assigned to classes of mail". See Docket R71-1, Vol. I, 1-9. If the first interpretation is deemed to be correct, no costs would be reported in the category denominated by § 3001.54(h)(2)(iv). The Commission was cognizant in writing the rules of the presiding officer's belief that it was not necessary to adopt either reading as exclusive.

include an analysis of the effect on costs of:

(i) Volume;

(ii) Peaking patterns;

(iii) Priority of handling;

(iv) Mailer preparations;

(v) Quality of service;

(vi) The physical nature of the item mailed;

(vii) Expected gains in total productivity, indicating such factors as operational and technological advances and innovations; and

(viii) Any other factor affecting costs.

(5) The cost forecasting or "roll-forward" model shall be provided. It shall include the following items:

(i) For each cost segment component, a listing of all forecasting factors used in the cost level, mail volume, nonvolume workload, additional workday, productivity and other programs effects.

(ii) For each "ripple-affected" cost segment component, a listing of those segments and components that determine its level of attribution or its distribution to mail class, subclass, rate category and service.

(iii) For each longer-run cost segment component:

(*a*) A listing of all factors used in determining its overall level of attribution, and

(*b*) A listing of the specific cost segment components used in determining its level of attribution, and its distribution to mail class, subclass, rate category and service.

(iv) Workpapers showing the application of the forecasting factors and procedures to each cost segment component for each time period used in the forecasting process. Such workpapers shall include the quantification, and distribution to mail class, subclass, rate category, and service, of each cost segment component, separating the short-run from the longer-run portions. Such workpapers shall conform to the requirements of paragraph (o) of this section. Compliance with the citation requirements of paragraph (o)(4) of this section shall be achieved by providing citations in "roll-forward" workpapers in the following cases:

(*a*) Workpapers showing the application of the forecasting factors and computational procedures (i.e., computer subroutines described in paragraph (h)(5)(iv)(*b*) of this section) to representative short-run cost segment components and to representative longer run cost segment components for representative time periods used in the forecasting process.

(*b*) Workpapers showing the application of a computational procedure to a cost segment component, if the application of a forecasting factor or computational procedure to a particular cost segment component deviates from the application of that forecasting factor or computational procedure as presented in the workpapers required by paragraph (h)(5)(iv)(*a*) of this section.

(v) If the "roll forward" model is submitted in the form of a computer-generated model, it shall include:

(*a*) An annotated glossary of input data files, to include, for each time period.

(*1*) The name of each input data file,

(*2*) A general description of each file in relation to the "roll forward" process,

(*3*) The format for each kind of data record in the file,

(*4*) For each distinct format type used in the file, a brief description of each data item included in the format.

(*b*) A hard-copy description, in the form of a mathematical equation, of each subroutine in the program.

(*c*) A copy of the Base Year attibutable cost matrix on a 5-inch floppy diskette in MS-DOS format.

(6) Attributable cost final adjustments by mail class, subclass, rate category and service, details of the development of those adjustments, and an explanation of each adjustment shall be provided.

(7) "Other services" adjustments by mail class, subclass, rate category and service, details of the development of those adjustments, and an explanation of each adjustment shall be provided.

(8) An overall summary cost table shall be provided. It shall show by mail class, subclass, rate category and service, short-run attributable costs, longer-run attributable costs, assign-

ble costs by category, and all adjustments made to each of the foregoing.

(9) For each cost segment, base-year amounts for each included account and subaccount shall be provided.

(10) The minimum level of disaggregation required for presenting evidence on a cost segment or component is that employed by the Commission in its most recently completed section 3624 proceeding establishing a methodological precedent for that segment or component. This requirement shall not apply:

(i) To presentations that propose to define, attribute, assign, or distribute to mail classes segment or component costs by a method not employed or recommended by the Commission in such proceeding, and the Postal Service has demonstrated that the proposed methodological departure makes the level of disaggregation most recently employed or recommended by the Commission inappropriate.

(ii) Where the Postal Service has demonstrated that changes in mail operations make the level of disaggregation most recently employed or recommended by the Commission inappropriate.

(11) Any nonattributed or unassigned costs specified in paragraph (h)(2)(iv) of this section shall be clearly and separately identified. An explanation shall be furnished as to why such costs cannot be attributed or assigned. To the extent possible, the presentation shall identify all such costs which benefit more than one class of mail or type of service (but not all classes or types), together with the mail classes or types of services so benefited.

(12) The Service shall furnish the data relevant to its analysis of the effect on costs of the factors specified in paragraphs (h)(4) (i) through (viii) of this section.

(i) *Criteria for rate schedule.* There shall be included in every formal request a statement of the criteria employed in constructing the proposed rate schedule. The submission shall include:

(1) The identification of the relationship between the revenues derived from the rates and fees for a particular class and subclass of mail or service and the costs attributed or assigned to that class and subclass or service;

(2) The identification of the procedures and methods used to apportion (to postal services) that part of the total revenue requirement, if any, which is in excess of costs attributed or assigned.[b]

(3) Such other studies, information and data relevant to the criteria established by section 3622 of the Act with appropriate explanations as will assist the Commission in determining whether or not the proposed rates or fees are in accordance with such criteria.

(j) *Revenues and volumes.* (1) Subject to paragraph (a)(2) of this section, every formal request shall set forth the actual and estimated revenues of the Postal Service from the then effective postal rates and fees for the fiscal years selected for the presentation of cost information submitted pursuant to paragraphs (f) and (g) of this section.

(2) Subject to paragraph (a)(2) of this section, every formal request shall set forth the estimated revenues based on the suggested rates and fees for the fiscal years selected for the presentation of cost information submitted pursuant to paragraph (f)(2) of this section.

(3) Subject to paragraph (a)(2) of this section, the actual and estimated revenues referred to in paragraphs (j)(1) and (2) of this section shall be shown in total and separately for each class and subclass of mail and postal service and for all other sources from which Postal Service collects revenues.

(4) Each revenue presentation required by paragraphs (j)(1), (2), and (3) of this section shall, subject to paragraph (a)(2) of this section, be supported by an identification of the methods and procedures employed.

(5) Subject to paragraph (a)(2) of this section, there shall be furnished in every formal request, for each class and subclass of mail and postal service, the following:

(i) An econometric demand study relating postal volumes to their economic and noneconomic determinants including postal rates, discounts and fees, personal income, business conditions, competitive and complementary postal services, competitive and complementary nonpostal activities, population, trend, seasonal patterns and other factors.

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[b] See footnote a, supra.

(ii) The actual or estimated volume of mail at the prefiled rates for each postal quarter beginning with the first quarter of the most recent complete fiscal year and ending one year beyond the last quarter of the future fiscal year.

(iii) The estimated volume of mail assuming the effectiveness of the suggested rates for each postal quarter beginning with the quarter in which the rates are assumed to become effective and ending one year beyond the last quarter of the future fiscal year.

(6) The estimated volumes and revenues referred to in paragraphs (j)(2), (j)(3) and (j)(5) of this section shall be derived from the econometric demand study referred to in paragraph (j)(5)(i) of this section. Any departure from the assumptions and specifications in the demand study made in estimating volumes of any class or subclass of mail shall be explained.

(i) Subject to paragraph (a)(2) of this section, there shall be furnished in every formal request a detailed explanation of the methodology employed to forecast volumes for each class and subclass of mail and postal service. Representative derivations of these forecasts from the econometric demand study shall be presented in detail for two major mail classes, showing each intermediate value or factor employed. For remaining classes and subclasses of mail, such derivations may be summarized, except where their derivations depart from the representative methods presented.

(ii) Subject to paragraph (a)(2) of this section, there shall be furnished in every formal request a detailed explanation of the methodology employed to forecast changes in revenues for each class and subclass of mail and postal service resulting from changes in rates and fees.

(iii) Subject to paragraph (a)(2) of this section, there shall be furnished in every formal request a computer implementation of the methodology employed to forecast volumes and revenues for each class and subclass of mail and postal service.

(iv) The computer implementation described in paragraph (j)(6)(iii) of this section shall be able to compute forecasts of volumes and revenues compatible with those referred to in paragraphs (j)(2), (j)(3), and (j)(5) of this section for:

(*a*) Any set of rates and fees within a reasonable range of the prefiled and suggested rates,

(*b*) any date of implementation within the range spanned by the assumed date and the start of the future fiscal year,

(*c*) alternative forecasts of the economic determinants of postal volumes other than postal rates and fees, and

(*d*) alternative values of any parameters with assigned values that are based upon unverifiable judgments.

(v) The computer implementation described in paragraph (j)(6)(iii) of this section shall comply with § 3001.31(k)(3).

(7) Subject to paragraph (a)(2) of this section, there shall be made available at the offices of the Commission with every formal request, in a form that can be read directly by a standard digital computer, the following:

(i) All of the input files and programs needed to replicate the econometric demand study referred to in paragraph (j)(5)(i) of this section;

(ii) Any input files and programs employed to derive a price index for any class or subclass of mail or postal service from postal rates, discounts and fees;

(iii) Any input files and programs used to prepare data for use in the econometric demand study referred to in paragraph (j)(5)(i) of this section.

(k) *Financial statements and related information.* (1) Subject to paragraph (k)(3) of this section, every formal request shall include, for the 2 fiscal years immediately preceding the fiscal year in which the date of formal filing occurs, the Balance Sheet, the Statement of Income and Expense, basic statistical information and the Statement of Income and Expense by budget categories of the Postal Service. This information shall include data with respect to:

(i) Balance Sheet and a supporting schedule for each item appearing thereon;

(ii) Statement of Income and Expense and a supporting schedule for each item appearing thereon;

(iii) As appropriate, statistical data with respect to revenue, pieces (by physical attributes, showing separately amounts of mail identified as stamped, metered, and imprinted, or other), weight, distance, postal employees (number, total payroll, productivity, etc.), postal space, post offices (number, classes, etc.), and any other pertinent factors which have been utilized in the development of the suggested rate schedule;

(iv) Statement of Income and Expense by cost segment.

(2) A reconciliation of the budgetary information with actual accrued costs shall be provided for the most recent fiscal year.

(3) If the fiscal information for the immediately preceding fiscal year is not fully available on the date of filing, a preliminary or pro forma submittal shall be made and upon final completion an updated report shall be filed in substitution therefor.

(l) *Billing determinants.* A statement, which can be in workpaper form, indicating for each class and subclass of mail and postal service the relevant billing determinants (e.g., the volume of mail related to each rate element in determining revenues) separately for the current rates and the proposed rates. Proposed changes in rate design and the related adjustments of billing determinants should be explained in detail.

(m) *Continuing and phasing appropriations.* A statement, which can be in workpaper form, presenting detailed calculations of continuing appropriations according to 39 U.S.C. 2401(c) and phasing appropriations under 39 U.S.C. 3626 and any proposed adjustment to such phased rates under 39 U.S.C. 3627 indicated by circumstances known at the time of the filing. Calculation of all the phased rates for the entire applicable phasing period should be explained in detail.

(n) *Performance goals.* (1) Every formal request shall identify any performance goals which have been established for the classes and subclasses of mail.

(2) Subject to paragraph (a)(2) of this section, the request shall identify the achieved levels of service for those classes and subclasses of mail and mail services for which performance goals have been set. This information may be provided by reference to published documents or otherwise.

(o) *Workpapers.* (1) Whenever the Service files a formal request it shall accompany the request with seven sets of workpapers, five for use by the Commission staff and two which shall be available for use by the public at the Commission's offices.

(2) Workpapers shall contain:

(i) Detailed information underlying the data and submissions for paragraphs (b) through (o) of this section in such fashion and content so as to permit independent analysis of each cost component and an independent attribution or assignment of costs to classes and subclasses and the assignment of nonattributed or unassigned costs to classes and subclasses;

(ii) A description of the methods used in collecting, summarizing and expanding the data used in the various submissions;

(iii) Summaries of sample data, allocation factors and other data used for the various submissions;

(iv) The expansion ratios used (where applicable); and

(v) The results of any special studies used to modify, expand, project, or audit routinely collected data.

(3) Workpapers shall be neat and legible and shall indicate how they relate to the data and submissions supplied in response to paragraphs (b) through (o) of this section.

(4) Workpapers shall include citations sufficient to enable a reviewer to trace any number used but not derived in the associated testimony back to published documents or, if not obtained from published documents, to primary data sources. Citations shall be sufficiently detailed to enable a reviewer to identify and locate the specific data used, e.g., by reference to document, page, line, column, etc. With the exception of workpapers that follow a standardized and repetitive format, the required citations

themselves, or a cross-reference to a specific page, line, and column of a table of citations, shall appear on each page of each workpaper. Workpapers that follow a standardized and repetitive format shall include the citations described in this paragraph for a sufficient number of representative examples to enable a reviewer to trace numbers directly or by analogy.

(p) *Certification by officials.* (1) Every formal request shall include one or more certifications stating that the cost statements and supporting data submitted as a part of the formal request, as well as the accompanying workpapers, which purport to reflect the books of the Postal Service, accurately set forth the results shown by such books.

(2) The certificates required by paragraph (q) of this section shall be signed by one or more representatives of the Postal Service authorized to make such certification. The signature of the official signing the document constitutes a representation that the official has read the document and that, to the best of his knowledge, information and belief, every statement contained in the instrument is proper.

(q) *Opinion of independent public accountant.* Every formal request shall include an opinion from an independent public accountant to the extent and as required by 39 U.S.C. 2008(e).

(r) *Special waiver provision for minor rate cases.* The Commission may, upon the filing of a proper motion by the Postal Service, together with a showing of good cause therefor, waive certain of the filing requirements of paragraphs (b) through (r) of this section if in the Commission's judgment it has been demonstrated that the proposed change in a rate or rates of postage and a fee or fees for postal service does not significantly change the then effective rates and fees or alter the cost-revenue relationships of the various classes and types of postal services.

(s) *Rejection of requests.* The Commission may reject any request under this subpart that patently fails to substantially comply with any requirements of this subpart.

[38 FR 7532, Mar. 22, 1973, as amended at 42 FR 8143, Feb. 9, 1977; 42 FR 18076, Apr. 5, 1977; 44 FR 26075, May 4, 1979; 45 FR 65575 and 65580, Oct. 3, 1980; 48 FR 3733, Jan. 27, 1983; 48 FR 50717, Nov. 3, 1983; 50 FR 43392, Oct. 25, 1985; 51 FR 8827, Mar. 14, 1986; 51 FR 14993, Apr. 22, 1986; 54 FR 35495, Aug. 28, 1989]

§ 3001.55 Service by the Postal Service.

Immediately after the issuance of an order or orders by the Commission designating an officer of the Commission to represent the interests of the general public or granting petitions to intervene in a proceeding before the Commission under this subpart, the Postal Service shall serve copies of its formal request for a recommended decision and its prepared direct evidence upon such officer and the parties permitted to intervene as provided in § 3001.12. Such service shall also be made on persons who have been granted limited participation.

[38 FR 3511, Feb. 7, 1973; 51 FR 8827, Mar. 14, 1986]

§ 3001.56 Failure to comply.

If the Postal Service fails to provide any information specified by this subpart, or otherwise required by the presiding officer or the Commission, the Commission, upon its own motion, or upon motion of any participant to the proceeding, may stay the proceeding until satisfactory compliance is achieved. The Commission will stay proceedings only if it finds that failure to supply adequate information interferes with the Commission's ability promptly to consider the request and to conduct its proceedings with expedition in accordance with the Act.

[38 FR 7535, Mar. 22, 1973; 51 FR 8827, Mar. 14, 1986]

§ 3001.57 Market response rate requests for express mail service—purpose and duration of rules.

(a) This section and §§ 3001.57a through 3001.57c only apply in cases in which the Postal Service requests an expedited recommended decision pursuant to section 3622 of the Postal Reorganization Act on changes in rates and fees for Express Mail service, where the proposed changes are intended to respond to a change in the market for expedited delivery services for the purpose of minimizing the loss of Express Mail contribution to institutional costs recommended in the most recent omnibus rate case. These rules set forth the requirements for filing data in support of such rate proposals and for providing notice of such requests, and establish an expedited procedural schedule for evaluating Market Response Rate Requests. These rules may not be used when the Postal Service is requesting changes in Express Mail rates as part of an omnibus rate case. Further explanation concerning these rules can be found at 54 FR 11394–413 (March 20, 1989), 54 FR 25132–42 (June 13, 1989) and PRC Order No. 836.

(b) This section and §§ 3001.57a through 3001.57c are initially to be effective for the limited period of five years from the date of their adoption by the Commission. During that period the Commission will continue to analyze the need for these rules to enable the Postal Service to respond to changes in the market for expedited delivery services, and the impact of these procedures on the ability of participants to review and comment on Postal Service proposals. These rules will cease to be effective at the end of this period unless they have been reissued by the Commission following a Notice of Proposed Rulemaking published in the FEDERAL REGISTER which provides an appropriate opportunity for public comments.

[54 FR 33687, Aug. 16, 1989]

§ 3001.57a Market response rate requests—data filing requirements.

(a) Each formal request made under the provisions of §§ 3001.57 through 3001.57c shall be accompanied by such information and data as are necessary to inform the Commission and the parties of the nature and expected impact of the change in rates proposed. Except for good cause shown, the information specified in paragraphs (c) through (i) shall also be provided with each request.

(b) Except as otherwise expressly provided in this section, the information required by 3001.54(b) through (r) must be filed only for those subclasses and services for which the Postal Service requests a change in rates or fees. Test period volume, cost, and revenue estimates presented in satisfaction of rule 57a shall be for four postal quarters beginning after the filing date of the request. The cost roll-forward may be developed by extending the cost forecasting model used in the last omnibus rate case (utilizing available actual data). Volume and revenue estimates required by these rules shall utilize, to the extent practicable, the factors identified in rule 54 (j)(6), and must be fully explained, with all available supporting documentation supplied, but they need not be econometrically derived.

(c) Every formal request made under the provisions of §§ 3001.57 through 3001.57c shall contain an explanation of why the change proposed by the Postal Service is a reasonable response to the change in the market for expedited delivery services to which it is intended to respond.

(d) Every formal request made under the provisions of §§ 3001.57 through 3001.57c shall be accompanied by the then effective Domestic Mail Classification Schedule sections which would have to be altered in order to implement the changes proposed by the Postal Service, and, arranged in a legislative format, the text of the replacement Domestic Mail Classification Schedule sections the Postal Service proposes.

(e) In addition to the required test period cost estimates, every formal request made under the provisions of §§ 3001.57 through 3001.57c shall be accompanied by a statement of the attributable costs by segment and component for Express Mail service determined in accordance with the attibutable cost methodology adopted by the Commission in the most recent omnibus rate case, for the base year used in that case, and for each fiscal year thereafter for which cost data is available. If the Postal Service believes that an adjustment to that methodology is warranted it may also provide costs using alternative methodologies as long as a full rationale for the proposed changes is provided.

(f) Each formal request made under the provisions of §§ 3001.57 through

3001.57c shall include a description of all operational changes, occurring since the most recent omnibus rate case, having an important impact on the attributable cost of Express Mail. Postal Service shall include an analysis and estimate of the cost impact of each such operational change.

(g) Every formal request made under the provisions of §§ 3001.57 through 3001.57c shall be accompanied by a statement of the actual Express Mail revenues of the Postal Service from the then effective Express Mail rates and fees for the most recent four quarters for which information is available.

(h) Each formal request made under the provisions of §§ 3001.57 through 3001.57c shall be accompanied by a complete description of the change in the market for expedited delivery services to which the Postal Service proposal is in response, a statement of when that change took place, the Postal Service's analysis of the anticipated impact of that change on the market, and a description of characteristics and needs of customers and market segments affected by this change which the proposed Express Mail rates are designed to satisfy.

(i) Each formal request made under the provisions of §§ 3001.57 through 3001.57c shall include estimates, on a quarterly basis, of test period volumes, revenues, and attributable costs determined in accordance with the attributable cost methodology adopted by the Commission in the most recent omnibus rate case for each Express Mail service for which rate changes are proposed assuming:

(1) Rates remain at their existing levels, and

(2) Rates are changed after 90 days to the levels suggested in the request.

(j)(1) Each formal request made under the provisions of §§ 3001.57 through 3001.57c shall be accompanied by the following information, for each quarter following the base year in the most recent omnibus rate case:

(i) Estimated volume by rate cell, for each Express Mail service;

(ii) Total postage pounds of Express Mail rated at:

(A) Up to ½ pound,

(B) ½ pound up to 2 pounds,

(C) 2 pounds up to 5 pounds; and

(iii) Total pounds of Express Mail and of each other subclass of mail carried on hub contracts.

(2) In each instance when rates change based on a proceeding under the provisions of §§ 3001.57 through 3001.57c the Postal Service shall provide, one year after the conclusion of the test period, the data described in § 3001.57a(j)(1) (i)–(iii), for each of the four quarters of the test period.

(k) Each formal request made under the provisions of §§ 3001.57 through 3001.57c shall include analyses to demonstrate:

(1) That the proposed rates are consistent with the factors listed in 39 U.S.C. 3622(b),

(2) That the proposed rate changes are in the public interest and in accordance with the policies and applicable criteria of the Act, and

(3) That the proposed rates will preserve, or minimize erosion of, the Express Mail contribution to institutional costs recommended in the most recent omnibus rate case.

(l) Each formal request made under the provisions of §§ 3001.57 through 3001.57c shall be accompanied by a certificate that service of the filing in accordance with § 3001.57b(c) has been made.

[54 FR 33688, Aug. 16, 1989]

§ 3001.57b Market response rate requests—expedition of public notice and procedural schedule.

(a) The purpose of this section is to provide a schedule for expediting proceedings when a trial-type hearing is required in a proceeding in which the Postal Service proposes to adjust rates for Express Mail service in order to respond to a change in the market for expedited delivery services.

(b) The Postal Service shall not propose for consideration under the provisions of §§ 3001.57 through 3001.57c rates lower than:

(1) The average per piece attributable cost for Express Mail service determined in the most recent omnibus rate case, or

(2) The average per piece attributable cost for Express Mail service as determined by the Postal Service in accordance with § 3001.57a(e) for the

most recent fiscal year for which information is available, whichever is higher. Neither shall the Postal Service propose a rate for any rate cell which is lower than the estimated test period attributable cost of providing that rate cell with service.

(c)(1) Persons who are interested in participating in Express Mail Market Response Rate Request cases may register at any time with the Secretary of the Postal Rate Commission, who shall maintain a publicly available list of the names and business addresses of all such Express Mail Market Response Registrants. Persons whose names appear on this list will automatically become parties to each Express Mail Market Response rate proceeding. Other interested persons may intervene pursuant to § 3001.20 within 28 days of the filing of a formal request made under the provisions of §§ 3001.57 through 3001.57c. Parties may withdraw from the register or a case by filing a notice with the Commission.

(2) When the Postal Service files a request under the provisions of §§ 3001.57 through 3001.57c it shall on that same day effect service by hand delivery of the complete filing to each Express Mail Market Response Registrant who maintains an address for service within the Washington metropolitan area and serve the complete filing by Express Mail service on all other Registrants. Each Registratnt is responsible for insuring that his or her address remains current.

(3) When the Postal Service files a request under the provisions of §§ 3001.57 through 3001.57c, it shall on that same day send by Express Mail service to all participants in the most recent omnibus rate case a notice which briefly describes its proposal. Such notice shall indicate on its first page that it is a notice of an Express Mail Market Response Rate Request to be considered under §§ 3001.57 through 3001.57c, and identify the last day for filing a notice of intervention with the Commission.

(d) In the absence of a compelling showing of good cause, the Postal Service and parties shall calculate Express Mail costs in accordance with the methodologies used by the Commission in the most recent omnibus rate case. In the analysis of customers' reactions to the change in the market for expedited delivery services which prompts the request, the Postal Service and parties may estimate the demand for segments of the expedited delivery market and for types of customers which were not separately considered when estimating volumes in the most recent omnibus rate case.

(e)(1) In the event that a party wishes to dispute as an issue of fact whether the Postal Service properly has calculated Express Mail costs or volumes (either before or after its proposed changes), or wishes to dispute whether the change in the market for expedited delivery services cited by the Postal Service has actually occurred, or wishes to dispute whether the rates proposed by the Postal Service are a reasonable response to the change in the market for expedited delivery services or are consistent with the policies of the Postal Reorganization Act, that party shall file with the Commission a request for a hearing within 28 days of the date that the Postal Service files its request. The request for hearing shall state with specificity the fact or facts set forth in the Postal Service's filing that the party disputes, and when possible, what the party believes to be the true fact or facts and the evidence it intends to provide in support of its position.

(2) The Commission will not hold hearings on a request made pursuant to §§ 3001.57 through 3001.57c unless it determines that there is a genuine issue of material fact to be resolved, and that a hearing is needed to resolve this issue.

(3) Whether or not a hearing is held, the Commission may request briefs and/or argument on an expedited schedule, but in any circumstance it will issue its recommended decision as promptly as is consistent with its statutory responsibilities.

(4) In order to assist in the rapid development of an adequate evidentiary record, all participants may file appropriate discovery requests on other participants as soon as an Express Mail Market Response Rate Request is filed. Answers to such discovery requests will be due within 10 days. Ob-

jections to such discovery requests must be made within 10 days in the form of a Motion to Excuse from Answering, with service on the questioning participant made by hand, facsimile, or expedited delivery. Responses to Motions to Excuse from Answering must be submitted within seven days, and should such a motion be denied, the answers to the discovery in question are due within seven days of the denial thereof. It is the Commission's intention that parties resolve discovery disputes informally between themselves whenever possible. The Commission, therefore, encourages the party receiving discovery requests considered to be unclear or objectionable to contact counsel for the party filing the discovery requests whenever further explanation is needed, or a potential discovery dispute might be resolved by means of such communication.

(5) If, either on its own motion, or after having received a request for a hearing, the Commission concludes that there exist one or more genuine issues of material fact and that a hearing is needed, the Commission shall expedite the conduct of such record evidentiary hearings to meet both the need to respond promptly to changed circumstances in the market and the standards of 5 U.S.C. 556 and 557. The procedural schedule, subject to change as described in paragraph (e)(6) of this section, is as follows: Hearings on the Postal Service case will begin 35 days after the filing of an Express Mail Market Response Rate Request; parties may file evidence either in support of or in opposition to the Postal Service proposal 49 days after the filing; hearings on the parties' evidence will begin 56 days after the filing; briefs will be due 70 days after the filing; and reply briefs will be due 77 days after the filing.

(6) The Presiding Officer may adjust any of the schedule dates prescribed in paragraph (e)(5) of this section in the interests of fairness, or to assist in the development of an adequate evidentiary record. Requests for the opportunity to present evidence to rebut a submission by a participant other than the Postal Service should be filed within three working days of the receipt of that material into the evidentiary record, and should include a description of the evidence to be offered and the amount of time needed to prepare and present it. Requests for additional time will be reviewed with consideration as to whether the requesting participant has exercised due diligence, and whether the requesting participant has been unreasonably delayed from fully understanding the proposal.

[54 FR 33688, Aug. 16, 1989]

§ 3001.57c Express mail market response—rule for decision.

The Commission will issue a recommended decision in accordance with the policies of 39 U.S.C., and which it determines would be a reasonable response to the change in the market for expedited delivery services. The purpose of §§ 3001.57 through 3001.57c is to allow for consideration of Express Mail Market Response Rate Requests within 90 days, consistent with the procedural due process rights of interested persons.

[54 FR 33689, Aug. 16, 1989]

Subpart C—Rules Applicable to Requests for Establishing or Changing the Mail Classification Schedule

§ 3001.61 Applicability.

The rules in this subpart govern the procedure with regard to requests of the Postal Service pursuant to section 3623 of the Act that the Commission submit a recommended decision on establishing or changing the mail classification schedule. The Rules of General Applicability in Subpart A of this part are also applicable to proceedings on requests subject to this subpart.

§ 3001.62 Filing of formal requests.

Whenever the Postal Service determines to request that the Commission submit a recommended decision on establishing or changing the mail classification schedule, the Postal Service shall file with the Commission a formal request for a recommended decision. Such request shall be filed in accordance with the requirements of

§§ 3001.9 to 3001.11 and § 3001.64. Within 5 days after the Postal Service has filed a formal request for a recommended decision in accordance with this subsection, the Secretary shall lodge a notice thereof with the Director of the Federal Register for publication in the FEDERAL REGISTER.

[38 FR 4330, Feb. 13, 1973, as amended at 51 FR 8827, Mar. 14, 1986]

§ 3001.63 Filing of prepared direct evidence.

Simultaneously with the filing of the formal request for a recommended decision under this subpart, the Postal Service shall file all of the prepared direct evidence upon which it proposes to reply in the proceeding on the record before the Commission to establish that the mail classification schedule or changes therein proposed by the Postal Service are in accordance with the policies and the applicable criteria of the Act. Such prepared direct evidence shall be in the form of prepared written testimony and documentary exhibits which shall be filed in accordance with § 3001.31.

§ 3001.64 Contents of formal requests.

(a) *General requirements.* (1) Each formal request filed under this subpart shall include such information and data and such statements of reasons and bases as are necessary and appropriate fully to inform the Commission and the parties of the nature, scope, significance, and impact of the proposed new mail classification schedule or the proposed changes therein and to show that the mail classification schedule as proposed to be established or changed is in accordance with the policies and the applicable criteria of the Act. To the extent the information is available or can be made available without undue burden, each formal request shall include the information specified in paragraphs (b) through (h) of this section. If the required information is set forth in the Postal Service's prepared direct evidence, it shall be deemed to be part of the formal request without restatement.

(2) If any information required by paragraphs (b) through (h) of this section is not available and cannot be made available without undue burden, the request shall provide where reference is made to this paragraph, in lieu of such information, a statement explaining with particularity:

(i) The information which is not available or cannot be made available without undue burden;

(ii) The reason or reasons that each such item of information is not available and cannot be made available without undue burden;

(iii) The steps or actions which would be needed to make each such item of information available, together with an estimate of the time and expense required therefor;

(iv) Whether it is contemplated that each such item of information will be supplied in the future and, if so, at what time; and

(v) Whether reliable estimates are available where such information cannot be furnished and, if so, the specifics of such estimates.

(3) The provisions of paragraph (a)(2) of this section for the Postal Service to include in its formal request certain alternative information in lieu of that specified by paragraphs (b) through (h) of this section are not in derogation of the Commission's and the presiding officer's authority, pursuant to §§ 3001.23 through 3001.28, respecting the provision of information at a time following receipt of the formal request.

(4) The Commission may request information in addition to that required by paragraphs (b) through (h) of this section.

(b) *Classification and standards information.* (1) Every formal request shall include copies of the then effective Domestic Mail Classification Schedule and the proposed changes therein, including, in legislative format, all proposed changes in the schedules of rate or rates of postage and fee or fees for postal services that appear therein.

(2) The schedules required by paragraph (b)(1) of this section shall, for all classes and subclasses of mail and service, be in summary fashion and tariff-like form. (E.g., there shall be a specification of those rules, regulations, and practices which establish the conditions of mailability and the

standards of service.) As a part thereof, the schedules shall specifically be addressed to such functions as mail pick-up and delivery, processing, and other similar functions.

(3) The schedules required by paragraph (b)(1) of this section shall also contain a statement identifying the degree of economic substitutability between the various classes and subclasses, e.g., a description of cross-elasticity of demand as between various classes of mail.

(4) The schedules required by paragraph (b)(1) of this section shall be accompanied by an identification of all nonpostal services.

(c) *Mail characteristics.* Every formal request shall include such studies, information and data on the characteristics of the users of the Postal Service, the nature of the items mailed and the nature of the methods of mailing, which will assist the Commission in determining whether or not the proposed mail classification schedule or the proposed changes therein are in accordance with the policies and the applicable criteria of the Act. Included, subject to paragraph (a)(2) of this section, shall be:

(1) An identification of the characteristics of the mailer and recipient, and a description of the contents of items mailed within the various classes and subclasses of mail and service.

(2) An identification of the physical attributes of the items mailed by class and subclass, including shape, weight, and distance.

(3) To the extent the following information is not expressly included under paragraph (b)(2) of this section, a summary statement describing special service arrangements provided to, or requested or required of, mailers by the Postal Service which bear upon the cost of service or the value of the mail service to both the sender and the recipient, e.g., services relating to mailer preparations in excess of requirements specified by the Postal Service Manual, pick-up and delivery, expedited or deferred processing, and other similar activities performed.

(d) *Effects of proposed changes.* (1) Subject to paragraph (a)(2) of this section, every formal request shall include a statement showing the effects of the proposed changes in the then effective classification schedule upon:

(i) The costs attributed and assigned to each class and subclass of mail or service as developed pursuant to § 3001.54(h);

(ii) The total accrued costs of the Postal Service developed pursuant to § 3001.54(f); and

(iii) The total revenues of the Postal Service and the revenues of each class and subclass of mail or service developed pursuant to § 3001.54(j).

(e) *Interclass changes.* Subject to paragraph (a)(2) of this section, whenever it is proposed that a portion of one existing class or subclass of mail or service be reassigned to another existing class or subclass of mail or service, every formal request shall include a comparison of the before and after costs and revenues associated with handling the relevant classes or subclasses of mail or service, and the before and after costs and revenues of the portion which is to be reassigned.

(f) *Statement of reasons.* Every formal request shall include a complete statement of the reasons and bases for the Postal Service's proposed mail classification schedule or proposed changes therein.

(g) *Workpapers.* (1) Whenever the Service files a formal request it shall accompany the request with seven sets of workpapers, five for use by the Commission staff and two which shall be available for use by the public at the Commission's offices.

(2) Workpapers shall contain:

(i) Detailed information underlying the data and submissions for paragraphs (b) through (f) of this section;

(ii) A description of the methods used in collecting, summarizing and expanding the data used in the various submissions;

(iii) Summaries of sample data, allocation factors and other data used for the various submissions;

(iv) The expansion ratios used (where applicable); and

(v) The results of any special studies used to modify, expand, project, or audit routinely collected data.

(3) Workpapers shall be neat and legible and shall indicate how they relate to the data and submissions sup-

plied in response to paragraphs (b) through (f) of this section.

(4) Workpapers shall include citations sufficient to enable a reviewer to trace any number used but not derived in the associated testimony back to published documents or, if not obtained from published documents, to primary data sources. Citations shall be sufficiently detailed to enable a reviewer to identify and locate the specific data used, e.g., by reference to document, page, line, column, etc. With the exception of workpapers that follow a standardized and repetitive format, the required citations themselves, or a cross-reference to a specific page, line, and column of a table of citations, shall appear on each page of each workpaper. Workpapers that follow a standardized and repetitive format shall include the citations described in this paragraph for a sufficient number of representative examples to enable a reviewer to trace numbers directly or by analogy.

(h) *Matters affecting rates and fees.* (1) This paragraph applies to any proposed change in the then effective classification schedule which would result:

(i) In a change in the rates or fees for any existing class or subclass of mail and service, or

(ii) In the establishment of a new class or subclass of mail or service for which rates or fees are to be established, or

(iii) In a change in the relationship of the costs attributed or assigned to any class or subclass of mail or service to the revenues of that class or subclass of mail or service, or

(iv) In a change in the relationship of the total costs of the Postal Service to the total revenues.

(2) In the case of any proposed change in the then effective classification schedule covered by paragraph (h)(1) of this section, every formal request shall include, subject to paragraph (a)(2) of this section:

(i) The information required by paragraphs (b) through (h), (j) through (l), and (o) through (p) of § 3001.54, together with the statement and opinion required by paragraphs (q) and (r) of § 3001.54; and

(ii) A statement explaining to what extent the Postal Service has considered the criteria of section 3622 of the Act as justifying the rate consequences of the proposed classifications. The submission shall also include the identification of the relationship between the rates and fees for a particular class and subclass or service, the identification of the procedures and methods used to relate the residual costs which have not been attributed to any class and subclass of mail or service or groups thereof, and such other studies, information, and data relevant to the criteria established by section 3622 of the Act with appropriate explanations.

(3) The Commission may, upon the filing of a proper motion by the Postal Service, together with a showing of good cause therefor, waive certain of the above requirements if in the Commission's judgment it has been demonstrated that the proposed change in the classification schedule does not significantly change the rates and fees or the cost-revenue relationships referred to in paragraphs (h)(1)(i) through (iv) of this section.

(i) *Rejection of requests.* The Commission may reject any request under this subpart that patently fails to substantially comply with the requirements of this subpart.

[38 FR 7535, Mar. 22, 1973, as amended at 42 FR 18076, Apr. 5, 1977; 44 FR 26075, May 4, 1979; 45 FR 65575, Oct. 3, 1980; 50 FR 43393, Oct. 25, 1985; 51 FR 8827, Mar. 14, 1986]

§ 3001.65 Service by the Postal Service.

Immediately after the issuance of an order or orders by the Commission designating an officer of the Commission to represent the interests of the general public or granting petitions to intervene in a proceeding before the Commission under this subpart, the Postal Service shall serve copies of its formal request for a recommended decision and its prepared direct evidence upon such officer and the parties permitted to intervene as provided in § 3001.12. Such service shall also be made on persons who have been granted limited participation.

[38 FR 3511, Feb. 7, 1973, as amended at 51 FR 8827, Mar. 14, 1986]

§ 3001.66 Failure to comply.

If the Postal Service fails to provide any information specified by this subpart, or otherwise required by the presiding officer or the Commission, the Commission, upon its own motion, or upon motion of any participant to the proceeding, may stay the proceeding until satisfactory compliance is achieved. The Commission will stay proceedings only if it finds that failure to supply adequate information interferes with the Commission's ability promptly to consider the request and to conduct its proceedings with expedition in accordance with the Act.

[38 FR 7536, Mar. 22, 1973, as amended at 51 FR 8827, Mar. 14, 1986]

§ 3001.67 Requests involving experimental changes.

(a) This section and §§ 3001.67a through 3001.67d apply in cases where the Postal Service requests a recommended decision pursuant to section 3623 of the Postal Reorganization Act and denominates the new service or change in an existing service as experimental in character. These sections do not apply to the situation in which a request not denominated as experimental by the Postal Service, either at the time of its filing or subsequently, is found to be justified by the Commission only on an experimental basis, following analysis of the record made in the proceedings on such a request.

(b) This section and §§ 3001.67a through 3001.67d are not intended to substitute for the rules generally governing requests for changes in the Domestic Mail Classification Schedule in cases where the treatment of the proposed changes as experimental is not justified by the character of those changes. The Commission reserves the right, in appropriate cases, to require that the normal procedures prescribed for nonexperimental cases under section 3623 be used. In determining whether the procedures for experimental cases may be used in a particular case, the Commission will consider:

(1) The novelty of the proposed change;

(2) The magnitude of the proposed change, including its effect on postal costs, postal revenues, mailing costs and practices of users of the mails, and persons or firms offering services competitive with or alternative to the service offerings of the Postal Service;

(3) The ease or difficulty of generating or gathering data with respect to the proposed change; and

(4) The desired duration of the experiment as indicated by the Postal Service in its request and, specifically, in its proposed Domestic Mail Classification Schedule language.

(c) In the case of a proposal denominated as an experiment by the Postal Service, the Commission will entertain representations by parties to the case that the proposal should not be considered as an experiment and should follow the normal mail classification change procedures. The Commission does not contemplate entertaining representations by parties to a case filed under the normal procedures that the matter should be treated as an experiment under this section and §§ 3001.67a through 3001.67d.

[45 FR 83226, Dec. 18, 1980]

§ 3001.67a Requests involving experimental changes—procedures for limitation of issues.

(a) The purpose of this section is to provide a mechanism for the limiting of issues on which a trial-type hearing is required. It recognizes that in a proceeding properly designated as experimental under § 3001.67, some issues will be appropriate for determination on the basis of a less formal type of presentation and counterpresentation. It is the policy of this section to identify these issues at the earliest possible time and to employ less formal procedures to resolve them where the interests of expedition will be served thereby.

(b) At the earliest possible time following the filing of a request designated as experimental, or following the determination of any question as to whether such designation is proper, holding that such designation is proper, the parties will be required to file statements of the issues they perceive in the case. Each such statement shall designate with particularity those issues the party believes to be or involve genuine issues of material fact. Any party designating an issue as a genuine issue of material fact wholly or in part because of the Postal Service's statement that data called for by § 3001.64 are unavailable shall comply with the requirements of § 3001.67b. Responsive statements will be permitted within 10 days of the filing of initial statements.

(c) Following the exchange of statements of issues called for by paragraph (b) of this section, the Commission will determine which issues constitute genuine issues of material fact and concomitantly order the limitation of trial-type hearing procedures to those issues. The order issued for this purpose will also set forth to the greatest extent feasible the procedures to be followed in disposing of issues not found to be genuine issues of material fact. According to the nature of the individual issue, these procedures may include.

(1) Filing of written comments and reply comments;

(2) Conference procedures, followed or accompanied by the filing of written comments and reply comments; and

(3) Briefing and argument.

In determining the procedures to be followed with respect to issues not requiring a trial-type hearing, the Commission will seek to accommodate the needs of expedition and procedural fairness in accordance with section 3624(b) of the Act.

[45 FR 83226, Dec. 18, 1980]

§ 3001.67b Requests involving experimental changes—unavailability of data.

If the Postal Service believes that data required to be filed under § 3001.64 are unavailable, it shall explain their unavailability as required by § 3001.64(a)(2)(i), (ii), and (iv). In particular, if the experimental character of the request bears on the unavailability of the data in question, the Postal Service shall explain in detail the nexus between these circumstances. A satisfactory explanation of the unavailability of data will be grounds for excluding from the proceeding a contention that the absence of the data should form a basis for rejection of the request, unless the party desiring to make such contention (a) demonstrates that, having regard to all the facts and circumstances of the case, it was clearly unreasonable for the Postal Service to propose the change in question without having first secured the data which are unavailable, or (b) demonstrates other compelling and exceptional circumstances requiring that the absence of the data in question be treated as bearing on the merits of the proposal.

[45 FR 83227, Dec. 18, 1980]

§ 3001.67c Requests involving experimental changes—plans for data collection.

(a) In any instance in which the Postal Service designates as unavailable data called for by § 3001.64, it shall, as part of its initial filing under that rule, either

(1) Describe with particularity the means it proposes to employ to collect those data, or

(2) State with particularity the reasons it believes establish that such data are unnecessary.

The Commission may by order require data to be collected during the course of the experiment which the Postal Service has not planned to collect, if it finds that a statement under paragraph (a)(2) of this section does not justify the omission to collect the particular data in issue.

(b) In the case of data which are not required to be filed under § 3001.64, but which the Postal Service intends to collect during and for the purposes of the proposed experimental change, the Postal Service shall include in its initial filing a detailed description of the data involved, the uses to which they would be put, and the methods to be employed in collecting them.

[45 FR 83227, Dec. 18, 1980]

§ 3001.67d Requests involving experimental changes—time limit.

The Commission will treat cases falling under §§ 3001.67 through 3001.67d as subject to the maximum expedition consistent with procedural fairness. The schedule for adoption of a recommended decision will therefore be established, in each such case, to allow for issuance of such decision not more than 150 days from the determination of any issue as to the propriety of experimental treatment under § 3001.67 (b) and (c) in a sense favorable to such treatment, or from the date of the filing of the request, whichever occurs later. Nothing in this section shall be construed to affect the rights of the Postal Service or of other parties with respect to the temporary implementation of changes pursuant to section 3641 of the Act.

[45 FR 83227, Dec. 18, 1980]

§ 3001.68 Text of the Domestic Mail Classification Schedule.

The Domestic Mail Classification Schedule established in accordance with Subchapter II of Chapter 36 of Title 39 of the United States Code appears (with blank rate schedules) as Appendix A to this subpart.

[50 FR 28144, July 10, 1985]

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GENERAL DEFINITIONS

As used in this Domestic Mail Classification Schedule, the following terms have the meanings set forth below.

.01 Advertising

Advertising includes all material for the publication of which a valuable consideration is paid, accepted, or promised, that calls attention to something for the purpose of getting people to buy it, sell it, seek it, or support it. If an advertising rate is charged for the publication of reading matter or other material, such material shall be deemed to be advertising. Articles, items, and notices in the form of reading matter inserted in accordance with a custom or understanding that textual matter is to be inserted for the advertiser or his products in the publication in which a display advertisement appears are deemed to be advertising. If a publisher advertises his own services or publications, or any other business of the publisher, whether in the form of display advertising or editorial or reading matter, this is deemed to be advertising.

.02 Aspect Ratio

Aspect ratio is the ratio of width to length.

.03 Bills and Statements of Account

Bills and statements of account are defined as follows:

a. A bill is a request for payment of a definite sum of money claimed to be owing by the addressee either to the sender or to a third party. The mere assertion of an indebtedness in a definite sum combined with a demand for payment is sufficient to make the message a bill.

b. A statement of account is the assertion of the existence of a debt in a definite amount but which does not necessarily contain a request or a demand for payment. The amount may be immediately due or may become due after a certain time or upon demand or billing at a later date.

c. A bill or statement of account must present the particulars of an indebtedness with sufficient definiteness to inform the debtor of the amount he is required to pay to acquit himself of the debt. However, neither a bill nor a statement of account need state the precise amount if it contains sufficient information to enable the debtor to determine the exact amount of the claim asserted.

d. A bill or statement of account is not the less a bill or statement of account merely because the amount claimed is not in fact owing or may not be legally collectible.

.04 Full Rates

Full rates are rates approved by the Governors of the Postal Service in accordance with Title 39 U.S.C., which are not reduced rates as set forth in title 39 U.S.C. 3626.

.05 Girth

Girth is the measurement around a piece of mail at its thickest part.

.06 Invoice

An invoice is a writing showing the nature, quantity, and cost or price of items shipped or sent to a purchaser or consignor.

.07 Permit Imprints

Permit imprints are printed indicia indicating postage has been paid by the sender under the permit number shown.

.08 Phased Rates

Phased rates are the reduced rates which increase annually as provided in 39 U.S.C. 3626(a). The sum of the annual increases equals the difference between the rates which were in effect for a class of mail or kind of mailer at the time of the enactment of the Postal Reorganization Act and either—

a. The full rates, or

b. The preferred rates;

for the class of mail or kind of mailer. The phased rates increase on July 6 of each year.

.09 Preferred Rates

Preferred rates are the reduced rates established pursuant to 39 U.S.C. 3626(a)(1).

.10 Territories and Possessions

For purposes of this Domestic Mail Classification Schedule, the terms territories and possessions include:

Baker Island
Canton Island
Caroline Islands
Enderbury Island
Guam
Howland Island
Jarvis Island
Johnston Island
Kingman Reef
Manua Island
Mariana Islands
Marshall Islands
Midway Islands
Navassa Island
Commonwealth of Puerto Rico
Saint Croix Island
Saint John Island
Saint Thomas Island
Samoa (American)
Sand Island
Swain's Island
Trust Territory of the Pacific
Virgin Islands (U.S.)
Wake Island

.11 ZIP Code

The ZIP Code is a numeric code that facilitates the sortation, routing, and delivery of mail.

CLASSIFICATION SCHEDULE 100—FIRST-CLASS MAIL

100.01 Definition

100.010 Any matter eligible for mailing may, at the option of the mailer, be mailed as First-Class Mail.

100.011 The following must be mailed as First-Class Mail, unless mailed as Express Mail or exempt under title 39 United States Code or except as authorized under sections 200.0421, 300.0451 and 400.0441:

a. Mail sealed against postal inspection as set forth in section 5000 of the General Terms and Conditions;

b. Matter wholly or partially in handwriting or typewriting except as specifically permitted by sections 200.013, 300.010, 300.0101, 400.021, 400.022 and 400.043; and,

c. Bills and statements of account.

100.02 Description of Subclasses

100.020 Regular Mail

Regular First-Class Mail consists of mailable matter posted at First-Class regular rates, weighing 11 ounces or less, and not mailed or eligible for mailing under sections 100.0201, 100.021, 100.0211, 100.022, 100.0221, or 100.023.

100.0201 ZIP+4 Rate Category Regular Mail

ZIP+4 rate category regular mail consists of pieces which meet the following eligibility requirements and the preparation requirements in section 100.047:

a. Bear a proper ZIP+4 code.

b. Be presented in mailings of 250 or more pieces; or if presorted, in mailings of 500 or more pieces.

c. Meet machinability criteria as prescribed by the Postal Service.

d. Meet address readability specifications for applicable mail processing equipment as prescribed by the Postal Service.

e. Have postage paid in a manner not requiring cancellation.

100.0202 Presorted Mail

Presorted First-Class Mail is First-Class Mail other than Priority Mail which is presented in a single mailing of 500 or more pieces, properly prepared and presorted.

100.0203 Pre-barcoded ZIP+4 Presorted Mail

Pre-barcoded ZIP+4 presorted mail is First-Class Mail presented in mailings of 500 or more pieces presorted to five-digit ZIP Codes, which meets the machinability, address readability and barcoding specifications of the Postal Service and which meets the preparation requirements in section 100.047.

100.021 Postal and post cards

a. A postal card is a card with postage imprinted or impressed on it supplied by the Postal Service for the transmission of messages. A post card is a privately printed mailing card for the transmission of messages.

b. Double postal or post cards may be mailed as postal or post cards. A double postal or post card consists of two attached cards, one of which may be detached by the receiver and returned by mail as a single postal or post card.

c. To be eligible to be mailed as a first—class post card, a card may not exceed any of the following dimensions.

i. Length not greater than 6 inches.

ii. Width not greater than 4¼ inches; or

iii. Thickness not greater than 0.0095 inch and uniform.

100.35-0206	Added (temporary)........... 24517
100.35-0207	Added (temporary)........... 25442
100.35-0208	Added (temporary)........... 25632
100.35-0209	Added (temporary)........... 26586
100.35-0210	Added (temporary)........... 25631
100.35-0215	Added (temporary)...28 greater than 6 inches;

100.0211 ZIP+4 rate category post cards

A ZIP+4 rate category post card is a privately printed mailing card for the transmission of messages which meets the eligibility and preparation requirements in sections 100.0211b, 100.043, and 100.047.

a. Double post cards may be mailed as ZIP+4 rate category post cards. A double post card consists of two attached cards, one of which may be detached by the receiver and returned by mail as a single post card.

b. ZIP+4 rate category post cards must:

i. Bear a proper ZIP+4 code.

ii. Be presented in mailings of 250 or more pieces; or, if presorted, in mailings of 500 or more pieces.

iii. Meet machinability criteria as prescribed by the Postal Service but may not exceed any of the following dimensions:

(1) Length not greater than 6 inches;

(2) Width not greater than 4¼ inches; or,

(3) Thickness not greater than 0.0095 inch and uniform.

iv. Meet address readability specifications for applicable mail processing equipment as prescribed by the Postal Service.

v. Have postage paid in a manner not requiring cancellation.

100.023 Priority Mail

Priority Mail consists of (1) First-Class Mail weighing more than the maximum weight established for regular First-Class Mail and (2) other mail matter (including First Class) which, at the option of the mailer, is mailed for expeditious mailing and transportation. Priority Mail may weigh up to and including 70 pounds.

100.03 Physical Limitations

100.030 First-Class Mail may not exceed 70 pounds or 108 inches in length and girth combined.

100.031 Cards exceeding the maximum post card dimensions set forth in section 100.021c or 100.0211b for ZIP+4 rate category cards may be mailed only under sections 100.020, 100.022, 100.201 and 100.0221 as appropriate.

100.032 First-Class Mail which weighs one ounce or less is nonstandard mail if:

a. Its aspect ratio does not fall between 1 to 1.3 and 1 to 2.5 inclusive, or

b. It exceeds any of the following dimensions:

i. 11.5 inches in length,

ii. 6.125 inches in width, or

iii. .25 inch in thickness.

100.04 Preparation of Mail

100.040 Postage must be paid as set forth in section 3000 of the General Terms and Conditions.

100.041 First-Class Mail mailed under section 100.0202 must be presorted in accordance with regulations prescribed by the Postal Service.

100.042 First-Class Mail mailed under section 100.0202 must be prepared as follows:

a. All pieces in a mailing must be presented in a manner specified by the Postal Service that preserves the presort and uniform orientation of the pieces.

b. All pieces in a mailing must bear markings identifying them as presorted First-Class Mail, as required by the Postal Service.

100.0421 Pieces not within the same postage rate increment may be mailed as presorted mail only when specified methods approved by the Postal Service for ascertaining and verifying postage are followed.

100.043 Postal and post cards, including ZIP+4 rate category post cards, with any of the following four characteristics are not mailable unless prepared as prescribed by the Postal Service:

a. Numbers or letters unrelated to postal purposes appearing on the address side of the card;

b. Punched holes;

c. Vertical tearing guide;

d. An address portion which is smaller than the remainder of the card.

100.044—100.045 [Reserved]

100.047 Pieces mailed under sections 100.0201, 100.0202, 100.0203, and 100.0211 must be prepared as follows:

a. All pieces in a mailing must be presented in a manner specified by the Postal Service.

b. All pieces in a mailing must bear markings as required by the Postal Service.

c. Pieces not within the same postage increment may be mailed at ZIP+4 rate category or pre-barcoded ZIP+4 presorted mail rates only when specific methods approved by the Postal Service for ascertaining and verifying postage are followed.

d. Pieces mailed at presorted ZIP+4 rate category or pre-barcoded ZIP+4 presorted mail rates must be properly prepared and presorted as prescribed by the Postal Service.

100.05 Mail Deposit

100.050 First-Class Mail must be deposited at places designated by the Postal Service.

100.051—100.052 [Reserved]

100.06 Service

100.060 First-Class Mail receives expeditious handling and transportation, except that when First-Class Mail is attached to or enclosed with mail of another class, the service of that class applies.

100.07 Forwarding and Return

100.070 First-Class Mail is forwarded without additional charge.

100.071 First-Class Mail that is undeliverable as addressed is returned to the sender, without additional charge.

100.08 Ancillary Services.

100.080 First-Class Mail, except as otherwise noted, will receive the following additional services upon payment of the appropriate fees:

	Classification schedule
a. Address correction	SS–1
b. Business reply mail (except ZIP + 4 rate category mail)	SS–2
c. Certificates of mailing	SS–4
d. Certified mail	SS–5
e. C.O.D.	SS–6
f. Insured mail	SS–9
g. Registered mail (except ZIP + 4 rate category mail)	SS–14
h. Special delivery	SS–17
i. Return receipt (Priority only)	SS–16
j. Merchandise return	SS–20

100.09 Rates and Fees

100.090 The rates and fees for First-Class Mail are set forth in the following rate schedules:

	Rate schedule
a. Regular	100
b. Postal and post cards	100
c. Presorted	100
d. Priority Mail	103
e. Fees	1000

100.091 Postage on First-Class Mail is computed separately on each piece of mail.

100.10 Authorizations and Licenses

100.100 A presorted mailing fee as set forth in Rate Schedule 1000 must be paid once each year at each office of mailing by any person who mails presorted mail, including presorted ZIP + 4 rate category mail and prebarcoded ZIP + 4 presorted mail.

CLASSIFICATION SCHEDULE 200—SECOND-CLASS MAIL

200.01 Definition

200.010 Second-class mail is mailable matter consisting of newspapers and other periodical publications which meet the qualifications listed in sections 200.0101 through 200.0109, or 200.0110.

200.0101 Second-class matter must be regularly issued at stated intervals at least four times a year, bear a date of issue, and be numbered consecutively.

200.0102 Second-class matter must have a known office of publication. A known office of publication is a public office where business of the publication is transacted during the usual business hours. The office must be maintained where the publication is authorized original second-class entry.

200.0103 Second-class matter must be formed of printed sheets. They may not be reproduced by stencil, mimeograph, or hectograph processes, or reproduced in imitation of typewriting. Reproduction by any other printing process is permissible. Any style of type may be used.

200.0104 Second-class matter must be originated and published for the purpose of disseminating information of a public character, or devoted to literature, the sciences, art, or some special industry.

200.0105 Second-class matter must have a legitimate list of persons who have subscribed by paying or promising to pay at a rate above nominal for copies to be received during a stated time, with such exception, as enumerated in section 200.0110.

a. Nominal rate means:

i. A token subscription price that is so low that it cannot be considered a material consideration;

ii. A reduction to the subscriber, under a premium offer or any other arrangements, of more than 50 percent of the amount charged at the basic annual rate for a subscriber to receive one copy of each issue published during the subscription period. The value of a premium is considered to be its actual cost to the publishers, the recognized retail value, or the represented value, whichever is highest.

200.0106 Except as provided in section 200.0107, second-class matter containing no advertising other than that of the publisher, is exempt from the requirements of sections 200.0104 and 200.0105 if it is:

a. Published by a regularly incorporated institution of learning;

b. Published by a regularly established state institution of learning supported in whole or in part by public taxation;

c. A bulletin issued by a state board of health or a state industrial development agency;

d. A bulletin issued by a state conservation or fish and game agency or department;

e. A bulletin issued by a state board or department of public charities and corrections;

f. Published by a public or nonprofit private elementary or secondary institution of learning or its administrative or governing body;

g. Program announcements or guides published by an educational radio or television agency of a state or political subdivision thereof, or by a nonprofit educational radio or television station;

h. Published by or under the auspices of a benevolent or fraternal society or order organized under the lodge system and having a bona fide membership of not less than 1,000 persons;

i. Published by or under the auspices of a trade(s) union;

j. Published by a strictly professional, literary, historical, or scientific society; or,

k. Published by a church or church organization.

200.0107 Second-class matter published by an institution or society identified in sections 200.0106 h through k, may contain advertising of other persons, institutions, or concerns, only under the following conditions:

a. The publication must be originated and published to further the objectives and purposes of the society;

b. Circulation must be limited to:

i. Copies mailed to members who pay either as a part of their dues or assessment or otherwise, not less than 50 percent of the regular subscription price;

ii. Other actual subscribers;

iii. Exchanges.

c. The circulation of nonsubscriber copies, including sample and complimentary copies, is limited to 10 percent of the total number of copies referred to in b.

200.0108 Second-class matter issued by state departments of agriculture may not contain advertising and must be published for the purpose of furthering the objects of the departments.

200.0109 Foreign newspapers and other periodicals of the same general character as domestic publications entered as second-class mail may be accepted on application of the publishers thereof or their agents, for transmission through the mail at the same rates as if published in the United States. This section does not authorize the transmission through the mail of a publication which violates a copyright granted by the United States.

200.011 The term "periodical publications" includes, but is not limited to:

a. Any catalog or other course listing including mail announcements of legal texts which are part of post-bar admission education issued by any institution of higher education or by a nonprofit organization engaged in continuing legal education.

b. Any looseleaf page or report (including any index, instruction for filing, table, or sectional identifier which is an integral part of such report) which is designed as part of a looseleaf reporting service concerning developments in the law or public policy.

200.0110 Notwithstanding section 200.0101 through 200.0109, publications which meet all the following criteria are second-class mailable matter.

a. Must contain at least 24 pages;

b. Must be issued at regular intervals at least four times a year;

c. Must not be owned or controlled by one or more individuals or business concerns and conducted as an auxiliary to and essentially for the advancement of the main business or calling of those who own or control them;

d. Must devote at least 25 percent of their pages to nonadvertising and not more than 75 percent to advertisements;

e. May be circulated free or mainly free;

f. Must have a legitimate list of persons who request the publication; 50 percent or more of the copies of the publication must be distributed to persons making such requests. Subscription copies paid for or promised to be paid for including those at or below a nominal rate may be included in the determination of whether the 50 percent request requirement is met. Persons will not be deemed to have requested the publication if their request is included by a premium offer or by receipt of material consideration, provided that mere receipt of the publication is not material consideration;

g. Must have a known office of publication. A known office of publication is a public office where business of the publication is transacted during the usual business hours. The office must be maintained where the publication is authorized original second-class entry.

200.012 Publications designed primarily for advertising purposes, free circulation, or circulation at nominal rates (see 200.0105) do not qualify for second-class privileges. This section and its subsections shall not apply to publications qualifying for second-class privileges under § 200.0110.

200.0121 Publications "designed primarily for advertising purposes" means publications which:

a. Have advertising in excess of 75 percent in more than one-half of their issues during any 12-month period;

b. Are owned or controlled by individuals or business concerns and conducted as an auxiliary to and essentially for the advancement of the main business or calling of those who own or control them;

c. Consist principally of advertising and editorial write-ups of the advertisers;

d. Consist principally of advertising and that have only a token list of subscribers, the circulation being mainly free;

e. Have only a token list of subscribers and that print advertisements free for advertisers who pay for copies to be sent to a list of persons furnished by the advertisers; or

f. Are published under a license from individuals or institutions and that feature other businesses of the licensor.

200.0122 Designed primarily for free circulation is defined as distribution of 50 percent or more of the copies of a publication for free or at a nominal rate. Copies mailed to persons who are not on a legitimate list of subscribers as set forth in sections 200.0105 and 200.0110 are free copies.

200.0123 For purposes of determining second-class eligibility and postage under Classification Schedule 200, an "issue" of a newspaper or other periodical shall be deemed to be a separate publication when the following conditions exist:

a. The issue is published at a regular frequency more often than once a month either on (1) the same day as another regular issue of the same publication; or (2) on a day different from regular issues of the same publication, and

b. More than 10 percent of the total number of copies of the issue is distributed on a regular basis to recipients who do not subscribe to it or request it, and

c. The number of copies of the issue distributed to nonsubscribers or nonrequesters is more than twice the number of copies of any other issue distributed to nonsubscribers or nonrequesters on that same day, or, if no other issue that day, any other issue distributed during the same period. "During the same period" shall be defined as the periods of time ensuing between the distribution of each of the issues whose eligibility is being examined.

Such separate publications must independently meet the qualifications in section 200.0101 through 200.0109, or 200.0110.

200.013 Second-class mail may contain enclosures and supplements as prescribed by the Postal Service. It may not contain writing, printing or sign thereof or therein, in addition to the original print, except as authorized by the Postal Service, or as authorized under section 200.0421.

200.02 Description of Subclasses

200.0201 Regular

Regular second-class mail is all second-class mail except that to which section 200.021 applies.

a. Regular second-class may be mailed only by publishers or registered news agents.

b. Nonsubscriber and nonrequester copies, including sample and complimentary copies, mailed at any time during the calendar year up to 10 percent of the total number of copies [1] mailed to subscribers and requesters during the calendar year are regular second-class mail provided that the nonsubscriber and nonrequester copies would have been regular second-class mail if mailed to subscribers or requesters. See section 200.093 for mailings in excess of the 10 percent limitation.

200.021 Preferred. The preferred subclasses, except Science of Agriculture publications, will receive newspaper treatment under the eligibility conditions established by the Postal Service.

200.0211 Within County

Within-county mail is second-class mail, other than matter mailed under section 200.0110, mailed in, and addressed for, delivery within the county where published and originally entered, from either the office of original entry or additional entry.

200.02111 To qualify as within county second class, one of the following conditions must be met:

a. The total paid circulation of the issue is less than 10,000 copies; or

b. The number of paid copies of the issue distributed within the county of publication is at least one more than one-half of the total paid circulation of such issue.

200.02112 For the purpose of the application of section 200.0211, when a publication has original entry at an independent incorporated city which is situated entirely within a county or which is contiguous to one or more counties in the same state, such incorporated city shall be considered to be within the county with which it is principally contiguous. Where more than one county is involved, the publisher will select the principal county.

200.0212 Nonprofit

Nonprofit mail is second-class mail, other than matter mailed under section 200.0110, entered by authorized nonprofit organizations or associations of the following types:

a. Religious,
b. Educational,
c. Scientific,
d. Philanthropic,
e. Agricultural,
f. Labor,
g. Veterans,
h. Fraternal,
and
i. Associations of rural electric cooperatives,

j. One publication, which contains no advertising published by the official highway or development agency of a state,

k. Program announcements or guides published by an educational radio or television agency of a state or political subdivision thereof or by a nonprofit educational radio or television station.

l. One conservation publication published by an agency of a state which is responsible for management and conservation of the fish or wildlife resources of such state.

200.02121 Nonprofit organizations or associations are organizations or associations not organized for profit, none of the net income of which benefits any private stockholder or individual, and which meet the qualifications set forth below for each type of organization or association. The standard of primary purpose applies to organizations listed under section 200.0212 a through f. The standard of primary purpose requires that each type of organization or association be both organized and operated for the primary purpose.

a. Religious. A nonprofit organization whose primary purpose is one of the following:

i. To conduct religious worship;

ii. To support the religious activities of nonprofit organizations whose primary purpose is to conduct religious worship;

iii. To perform instruction in, to disseminate information about, or otherwise to further the teaching of particular religious faiths or tenets.

b. Educational. A nonprofit organization whose primary purpose is one of the following:

i. The instruction or training of the individual for the purpose of improving or developing his capabilities;

ii. The instruction of the public on subjects beneficial to the community.

An organization may be educational even though it advocates a particular position or viewpoint so long as it presents a sufficiently full and fair exposition of the pertinent facts to permit an individual or the public to form an independent opinion or conclusion. On the other hand, an organization is not educational if its principal function is the mere presentation of unsupported opinion.

c. Scientific. A nonprofit organization whose primary purpose is one of the following:

i. To conduct research in the applied, pure or natural sciences;

ii. To disseminate systematized technical information dealing with applied, pure or natural sciences.

d. Philanthropic. A nonprofit organization primarily organized and operated for purposes beneficial to the public. Philanthropic organizations include, but are not limited to, organizations which are organized for:

i. Relief of the poor and distressed or of the underprivileged;

ii. Advancement of religion;

iii. Advancement of education or science;

iv. Erection or maintenance of public buildings, monuments, or works;

v. Lessening of the burdens of Government;

vi. Promotion of social welfare by organizations designed to accomplish any of the above purposes or;

(a) To lessen neighborhood tensions;

(b) To eliminate prejudice and discrimination;

(c) To defend human and civil rights secured by law; or

(d) To combat community deterioration and juvenile delinquency.

e. Agricultural. A nonprofit organization whose primary purpose is the betterment of the conditions of those engaged in agricultural pursuits, the improvement of the grade of their products, and the development of a higher degree of efficiency in agriculture. The organization may further and advance agricultural interests through educational activities; the holding of agricultural fairs; the collection and dissemination of information concerning cultivation of the soil and its fruits or the harvesting of marine resources; the rearing, feeding, and management of livestock, poultry, and bees, or other activities relating to agricultural interests. The term agricultural nonprofit organization also includes any nonprofit organization whose primary purpose is the collection and dissemination of information or materials relating to agricultural pursuits.

f. Labor. A nonprofit organization whose primary purpose is the betterment of the conditions of workers. Labor organizations include, but are not limited to, organizations in which employees or workmen participate, whose primary purpose is to deal with employers concerning grievances, labor disputes, wages, hours of employment and working conditions.

g. Veterans'. A nonprofit organization of veterans of the armed services of the United States, or an auxiliary unit or society of, or a trust or foundation for, any such post or organization.

h. Fraternal. A nonprofit organization which meets all of the following criteria:

i. Has as its primary purpose the fostering of brotherhood and mutual benefits among its members;

ii. Is organized under a lodge or chapter system with a representative form of government;

iii. Follows a ritualistic format; and

iv. Is comprised of members who are elected to membership by vote of the members

200.0213 Classroom

Classroom mail is second-class mail, othe than matter mailed under section 200.011 consisting of religious, educational, or scientific publications designed specifically fo use in school classrooms or religious instruction classes.

200.0214 Science of Agriculture

Science of agriculture mail is second-class mail, other than matter mailed under section 200.0110, consisting of any publication devoted to the science of agriculture if the total number of copies of the publication furnished during any 12-month period to subscribers residing in rural areas amounts to at least 70 percent of the total number of copies distributed by any means for any purpose.

200.0215 Second-class preferred mail (200.021) may be mailed only by publishers or registered news agents.

200.0216 Nonsubscriber copies, including sample and complimentary copies, mailed at any time during the calendar year up to 10 percent of the total number of copies mailed to subscribers during the calendar year are preferred mail, provided that the nonsubscriber copies would have been preferred mail if mailed to subscribers. See section 200.093 for mailing in excess of the 10 percent limitation.

For §§ 200.0211, 200.0212, and 200.0213, expedited second-class mail is available without additional charge, but only to publications that issue weekly, or more frequently, and consist of news of general interest.

200.03 Physical Limitations

200.030 There are no maximum size and weight limits for second-class mail.

200.04 Preparation of Mail

200.040 Postage must be paid as set forth in section 3000 of the General Terms and Conditions.

200.041 Second-class mail must be presorted in accordance with regulations prescribed by the Postal Service.

200.042 First- or third-class mail may be attached to or enclosed with second-class mail if additional postage is paid for the attachment or enclosure as if it had been mailed separately. If postage is not paid at the appropriate first- or third-class rate, the combined piece is subject to the next higher rate which can be applied to the attachment or enclosure. When first- or third-class mail is enclosed with or attached to second-class mail, an appropriate marking must identify the presence and class of the enclosure or attachment.

200.0421 First-Class Mail, as defined in section 100.011 (b) and (c), may be attached to or enclosed with second-class mail, with postage paid on the combined piece at the applicable second-class rate. The attachment or enclosure must be incidental to the piece to which it is attached or with which it is enclosed.

200.0422 First-Class Mail, which is not included under section 200.0421, or third-class mail may be attached to or enclosed with second-class mail if additional postage is paid for the attachment or enclosure as if it had been mailed separately. If postage is not paid at the appropriate First-Class or third-class rate, the combined piece is subject to the next higher rate which can be applied to the attachment or enclosure. When First-Class or third-class mail is enclosed with or attached to second-class mail under this subsection, an appropriate marking must identify the presence and class of the enclosure or attachment.

200.043 Second class mail must be identified as required by the Postal Service.

200.044 Nonsubscriber and nonrequester copies, including sample and complimentary copies, must be identified as required by the Postal Service.

200.045 Information relating to periodical publications must be filed with the Postal Service in accordance with 39 U.S.C. § 3685.

200.05 Mail Deposit

200.050 Second-class mail must be deposited at places designated by the Postal Service.

200.06 [Reserved]

200.07 Forwarding and Return

200.070 Undeliverable-as-addressed second-class mail will be forwarded or returned to the mailer, as prescribed by the Postal Service. Undeliverable-as-addressed combined First- and second-class pieces will be forwarded or returned, as prescribed by the Postal Service. Additional charges when second-class mail is returned will be based on the applicable third- or fourth-class rate.

200.08 Ancillary Services

200.080 Second-class mail will receive the following additional service upon payment of the appropriate fee:

	Classification schedule
Special delivery	SS-1.

200.09 Rates and Fees

200.090 The rates and fees for second-class mail are set forth as follows:

	Rate schedule
a. Regular	200
b. Within County	201
c. Nonprofit	202
d. Classroom	203
e. Science of Agriculture	200

	Rate schedule
f. Fees	1000

200.091 For six months after a subscription has expired, second-class mail may be mailed to a former subscriber at the rates that apply to copies mailed to subscribers, if the publisher has attempted during that six months to obtain payment, or a promise to pay, for renewal.

200.092 A publisher may mail one complete copy of each issue to each advertiser in that issue as an advertiser's proof copy at the rates that apply to subscriber and requester copies, whether the advertiser's proof copy is mailed to the advertiser directly or, instead, to an advertising representative or agent of the publication.

200.093 Nonsubscriber and nonrequester copies, including sample and complimentary copies, of any second-class mail mailed at any time during the calendar year, in excess of 10 percent of the total number of copies mailed to subscribers or requesters during the calendar year which are presorted and commingled with subscriber or requester copies are charged the full rates for regular second-class shown in Rate Schedule 200. The 10 percent limitation for a publication shall be based on the total number of all copies of that publication mailed to subscribers and requesters during the calendar year, subject to section 200.0216.

200.094 Copies of any second-class mail which are destined for delivery within the sectional center area in which they are entered qualify for the applicable SCF discount as set forth in Rate Schedules 200, 202, and 203. The sectional center areas will be prescribed by the Postal Service.

200.10 Authorizations and Licenses

200.100 Prior to mailing at second-class rates publications must be authorized for entry as second-class mail by the Postal Service. Each authorized publication will be granted one original entry office where the office of publication is maintained. Additional entry offices may be granted by the Postal Service upon application. Application for re-entry shall be made whenever there is a change in the publication's title, frequency of issue or office of original entry.

200.101 News agents must register at all post offices at which they mail second-class mail and pay the applicable fee as set forth in Rate Schedule 1000.

200.1011 A news agent is a person or concern engaged in selling two or more second-class publications published by more than one publisher.

200.102 Publications set forth in sections 200.0212, 200.0213 and 200.0214, must obtain the Postal Service's authorization to mail at the rates for such publications.

CLASSIFICATION SCHEDULE 300—THIRD-CLASS MAIL

300.01 Definition

300.010 Third-class mail is mailable matter weighing less than 16 ounces, except:

a. Matter mailed or required to be mailed as first-class mail;

b. Matter entered as second-class mail, except copies sent by a printer to a publisher, and except copies that would have traveled at the former transient rate;

c. Matter mailed under section 400.021 or section 400.022.

300.0101 Circulars and printed matter weighing less than 16 ounces, including printed letters which according to internal evidence are being sent in identical terms to several persons, but which do not have the character of actual or personal correspondence, are third-class mail. Circulars do not lose their character as third-class mail when the date and name of the addressee and of the sender are written thereon, nor by the correction in writing of mere typographical errors. For the purposes of Classification Schedule 300, "printed" does not include reproduction by handwriting or typewriting.

300.02 Description of Subclasses

300.020 Single Piece

Single-piece mail is third-class mail not eligible for mailing under section 300.021 or 300.022.

300.021 Bulk

Bulk rate third-class mail consists of mailings of properly prepared and presorted separately addressed pieces of identical size and weight (except as provided in § 300.047) of third-class mail, in quantities of not less than 50 pounds or of 200 or more pieces.

300.0211 Regular

Regular rate bulk mail is third-class bulk mail which is not eligible for mailing under section 300.0212.

300.0212 Nonprofit

Nonprofit bulk mail is third-class mail mailed by authorized nonprofit organizations or associations of the following types

a. Religious,
b. Educational,
c. Scientific,
d. Philanthropic,
e. Agricultural,
f. Labor,
g. Veterans',
h. Fraternal,
i. Qualified political committees.

300.02121 Nonprofit organizations or associations are organizations or associations not organized for profit, none of the net income of which benefits any private stockholder or individual, and which meet the qualifications set forth before for each type of organization or association. The standard of primary purpose applies to each type of organization or association, except veterans and fraternal. The standard or primary purpose requires that each type of organization or association be both organized and operated for the primary purpose.

The following are the types of organizations or associations which may qualify as authorized nonprofit organizations or associations.

a. Religious. A nonprofit organization whose primary purpose is one of the following:

i. To conduct religious worship;

ii. To support the religious activities of nonprofit organizations whose primary purpose is to conduct religious worship;

iii. To perform instruction in, to disseminate information about, or otherwise to further the teaching of particular religious faiths or tenets.

b. Educational. A nonprofit organization whose primary purpose is one of the following:

i. The instruction or training of the individual for the purpose of improving or developing his capabilities;

ii. The instruction of the public on subjects beneficial to the community.

An organization may be educational even though it advocates a particular position or viewpoint so long as it presents a sufficiently full and fair exposition of the pertinent facts to permit an individul or the public to form an independent opinion or conclusion. On the other hand, an organization is not educational if its principal function is the mere presentation of unsupported opinion.

c. Scientific. A nonprofit organization whose primary purpose is one of the following:

i. To conduct research in the applied, pure or natural sciences;

ii. To disseminate systematized technical information dealing with applied, pure or natural sciences.

d. Philanthropic. A nonprofit organization primarily organized and operated for purposes beneficial to the public. Philanthropic organizations include, but are not limited to, organizations which are organized for:

i. Relief of the poor and distressed or of the underprivileged;

ii. Advancement of religion;

iii. Advancement of education or science;

iv. Erection or maintenance of public buildings, monuments, or works;

v. Lessening of the burdens of Government;

vi. Promotion of social welfare by organizations designed to accomplish any of the above purposes or;

(a) To lessen neighborhood tensions;

(b) To eliminate prejudice and discrimination;

(c) To defend human and civil rights secured by law; or

(d) To combat community deterioration and juvenile delinquency.

e. Agricultural. A nonprofit organization whose primary purpose is the betterment of the conditions of those engaged in agricultural pursuits, the improvement of the grade of their products, and the development of a higher degree of efficiency in agriculture. The organization may further and advance agricultural interests through educational activities; the holding of agricultural fairs; the collection and dissemination of information concerning cultivation of the soil and its fruits or the harvesting of marine resources; the rearing, feeding, and management of livestock, poultry, and bees, or other activities relating toagricultural interests. The term agricultural nonprofit organization also includes any nonprofit organization whose primary purpose is the collection and dissemination of information or materials relating to agricultural pursuits.

f. Labor. A nonprofit organization whose primary purpose is the betterment of the conditions of workers. Labor organizations include, but are not limited to, organizations in which employees or workmen participate, whose primary purpose is to deal with employers concerning grievances, labor disputes, wages, hours of employment and working conditions.

g. Veterans'. A nonprofit organization of veterans of the armed services of the United States, or an auxiliary unit or society of, or a trust or foundation for, any such post or organization.

h. Fraternal. A nonprofit organization which meets all of the following criteria:

i. Has as its primary purpose the fostering of brotherhood and mutual benefits among its members;

ii. Is organized under a lodge or chapter system with a representative form of government;

iii. Follows a ritualistic format; and

iv. Is comprised of members who are elected to membership by vote of the members.

i. Qualified political committees. The term "qualified political committee" means a national or State committee of a political party, the Republican and Democratic Senatorial Campaign Committees, the Democratic National Congressional Committee, and the National Republican Congressional Committee:

(A) The term "national committee" means the organization which, by virtue of the bylaws of a political party, is responsible for

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the day-to-day operation of such political party at the national level; and

(B) The term "State committee" means the organization which, by virtue of the bylaws of a political party, is responsible for the day-to-day operation of such political party at the State level.

300.02122 An organization authorized to mail at the special bulk third-class rates for qualified non-profit organizations may mail only its own matter at these rates. An organization may not delegate or lend the use of its permit to mail at special third-class rates to any other person, organization or association.

300.022 Keys and Identification Devices

Keys and identification devices include keys, identification cards, identification tags, or similar identification devices mailed without cover, and which bear, contain, or have securely attached the name and complete post office address of a person, organization, or concern, with instructions to return to such address and a statement guaranteeing the payment of postage due on delivery.

300.023 Bulk Rate Presort Categories

Bulk rate mail sent under section 300.021 must meet the conditions of sections 300.0231 or 300.0232 to be eligible for the applicable presort level rate.

300.0230 Required Sortation

Mailers must sort third-class bulk mail as prescribed by the Postal Service. The basic sortation, other than the two described below, pays the "Required Presortation" rate in Rate Schedules 301 and 302.

300.0231 Required Sortation, ZIP + 4 Coded Mail

Required sortation, ZIP + 4 coded mail is mail mailed under section 300.0230 whose address contains the ZIP + 4 code and which meets the machinability, address readability and other preparation requirements prescribed by the Postal Service.

300.0232 Five Digit Presort Level

Five-digit presort level mailings must contain at least 200 pieces or 50 pounds of five-digit presorted mail prepared in accordance with USPS regulations so as to avoid handling of individual pieces prior to incoming secondary distribution.

30.0233 Five-Digit Presort Level, ZIP + 4 Coded Mail

Five-digit presort level, ZIP + 4 coded mail is mail mailed under section 300.0232 whose address contains the ZIP + 4 code and which meets the machinability, address readability and other preparation requirements prescribed by the Postal Service.

300.0234 Five-Digit Presort Level, ZIP + 4 Pre-barcoded Mail

Five-digit presort level, ZIP + 4 pre-barcoded mail is mail mailed under section 300.0232 which is ZIP + 4 pre-barcoded and which meets the machinability and other preparation requirements prescribed by the Postal Service.

300.0235 Carrier Route Presort Level

Carrier route presort level mailings must contain at least 200 pieces or 50 pounds of carrier route presorted mail, with at least 10 pieces to each carrier route. The mail must be properly prepared in the manner prescribed by the Postal Service.

300.03—Physical Limitations

300.030

a. There is no maximum size for single-piece third-class mail.

b. Except as provided in section 300.030c, the maximum size for mail qualifying for the carrier route presort level is 14 inches in length, 11.5 inches in width, and 0.75 inch in thickness.

c. Merchandise samples with detached labels may be sent at the carrier route presort rate even though their dimensions may exceed the prescribed maxima, if they meet all other requirements of the carrier route presort level and the detached labels do not exceed those dimensions.

d. For bulk mail not presorted to the carrier route level, there is no size limitation.

300.031 Third-class single-piece mail weighing one ounce or less is nonstandard if:

a. Its aspect ratio does not fall between 1 to 1.3 and 1 to 2.5, inclusive, or

b. It exceeds any of the following:

i. 11.5 inches in length,

ii. 6.125 inches in width, or

iii. .25 inch in thickness.

300.04 Preparation of mail

300.040 Postage must be paid as set forth in section 3000 of the General Terms and Conditions.

300.041 Third-class bulk mail must be presorted as prescribed by the Postal Service.

300.042 Third-class mail must be identifed as required by the Postal Service.

300.043 Third-class mail may have the following written additions placed on the wrapper, on a tag or label attached to the outside of the parcel, or inside the parcel, either attached to the article or loose:

a. Marks, numbers, name, or letters descriptive of contents;

b. *Please Do Not Open Until Christmas*, or words of similar import;

c. Instructions and directions for the use of an article in the package;

d. Manuscript dedication or inscription not in the nature of personal correspondence;

e. Marks to call attention to any word or passage in text;

f. Corrections of typographical errors in:

i. Circulars and printed matter: Handwritten or typewritten changes or additions in the body of a circular are limited to corrections of actual typographical errors.

ii. Proof sheets: Corrections in proof sheets include corrections of typographical and other errors, alterations of text, insertion of new text, marginal instructions to the printer, and rewrites of parts if necessary for correction.

g. Handstamped imprints, except when the added matter is itself personal or converts the original matter to a personal communication;

h. An invoice.

300.044 Third-class mail may contain enclosures and attachments as authorized under § 300.0451 or as follows:

a. Books and catalogs mailed at the bulk rates reserved for items in § 300.09bi may have no external attachments. Only the following items may be enclosed loose provided they relate exclusively to the book or catalog they accompany.

i. A single reply envelope or reply post card, or both;

ii. A single order form;

iii. A printed calendar. Circulars fastened securely along the entire bound edge inside the book or catalog by paste, stitches, or staples are not loose enclosures;

iv. If no circular is enclosed, a printed price list listing only articles featured in the catalog and showing only the same prices and discounts as the catalog;

v. An invoice; or

vi. Samples or merchandise attached to pages.

b. Except as provided in § 300.044a, all third-class mail may contain the following enclosures;

i. An invoice;

ii. Manuscripts accompanying related proof sheets.

300.045 First-class mail may be attached to or enclosed in third-class books, catalogs, and merchandise if additional postage is paid for the attachment or enclosure as if it had been mailed separately. If postage is not paid at the appropriate first-class rate, the third-class piece is subject to the higher first-class rate. When first-class mail is enclosed with or attached to third-class mail, an appropriate marking must identify the presence and class of the enclosure or attachment.

300.0451 First-Class Mail, as defined in § 100.011 (b) and (c), may be attached to or enclosed with third-class merchandise, including books but excluding merchandise samples, with postage paid on the combined piece at the applicable third-class rate. The attachment or enclosure must be incidental to the piece to which it is attached or with which it is enclosed.

300.0452 First-Class Mail, which is not included under § 300.0451, may be attached to or enclosed with third-class books, catalogs, and merchandise if additional postage is paid for the attachment or enclosure as if it had been mailed separately. If postage is not paid at the appropriate First-Class rate, the third-class piece is subject to the higher First-Class rate. When First-Class Mail is enclosed with or attached to third-class mail under this subsection, an appropriate marking must identify the presence and class of the enclosure or attachment.

300.046 Mailers of bulk third-class mail must submit appropriate mailing forms.

300.047 Pieces that are not of identical size and weight may be mailed as bulk third-class mail only when specific methods approved by the Postal Service for ascertaining and verifying postage are followed.

300.048 Two or more third-class bulk mailings may be commingled and mailed as bulk third-class mail only when specific methods approved by the Postal Service for ascertaining and verifying postage are followed.

300.05 Mail Deposit

300.050 Third-class mail must be deposited at places designated by the Postal Service.

300.06 Service

300.060 Third-class mail may receive deferred service.

300.07 Forwarding and Return

300.070 Undeliverable-as-addressed third-class mail will be returned on request of the mailer, or forwarded and returned on request of the mailer. Undeliverable-as-addressed combined first-class and third-class pieces will be returned as prescribed by the Postal Service. The single-piece third-class rate is charged for each piece receiving return only service. Charges for forwarding-and-return service are assessed only on those pieces which cannot be forwarded and are returned. The charge for those returned pieces is the appropriate single-piece third-class rate for the piece plus that rate multiplied by a factor equal to the number of third-class pieces nationwide that are successfully forwarded for every one piece that cannot be forwarded and must be returned.

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300.08 Ancillary Services

300.080 Third-class single-piece mail will receive the following services upon payment of the appropriate fees:

	Classification schedule
a. Address Correction	SS-1
b. Certificates of mailing	SS-4
c. C.O.D.	SS-6
d. Insured mail	SS-9
e. Special delivery	SS-17
f. Special handling	SS-18
g. Return receipt (merchandise only)	SS-16
h. Merchandise return	SS-20

300.081 Third-class bulk mail will receive the following services upon payment of the appropriate fees:

	Classification schedule
a. Address correction	SS-1
b. Certificates of mailing indicating that a specified number of pieces have been mailed. Certificates of mailing are not available for third-class bulk rate mail mailed under permit imprints	SS-4

300.09 Rates and Fees

300.090 The rates for third-class mail are set forth as follows:

	Rate schedule
a. Single piece	300
b. Bulk regular	301
c. Bulk nonprofit	302
d. Keys and identification devices	303
e. Fees	1000

300.10 Authorizations and Licenses

300.100 A mailing fee as set forth in Rate Schedule 1000 must be paid once each year by mailers of third-class bulk mail.

CLASSIFICATION SCHEDULE 400—FOURTH-CLASS MAIL

400.01 Definition

400.010 Fourth-class mail is mailable matter weighing 16 ounces or more, except:

a. Matter mailed or required to be mailed as first-class mail;

b. Matter entered as second-class mail, except copies sent by a printer to a publisher, and except copies that would have traveled at the former transient rate;

c. Matter entered as controlled circulation mail;

d. That the 16-ounce minimum weight does not apply to matter mailed under sections 400.021 or 400.022.

400.02 Description of Subclasses

400.020 Parcel Post

Parcel post is fourth-class mail not mailed or eligible for mailing under sections 400.021, 400.022, 400.023.

400.0201 Single-piece

Single-piece parcel post mail is fourth-class parcel post mail not eligible for mailing under section 400.0202.

400.0202 Bulk

Bulk parcel post mail is fourth-class parcel post mail consisting of properly prepared and separated single mailings of at least 300 pieces or 2000 pounds. Pieces weighing less than 15 pounds and measuring over 84 inches in length and girth combined are not mailable as bulk parcel post. Provision for mailing nonidentical pieces is set forth in section 400.046.

400.0203 Intra-BMC Parcel Post Mail

Parcel post mail is eligible for the intra-BMC rate described in rate schedule 400 if it originates and destinates in the same BMC or ASF service area, Alaska, Hawaii or Puerto Rico.

400.021 Special

Special mail is fourth-class mail consisting of:

a. Books, including books issued to supplement other books, of at least 8 printed pages, consisting wholly of reading matter or scholarly bibliography or reading matter with incidental blank spaces for notations, and containing no advertising matter other than incidental announcements of books.

Not more than three of the announcements permitted in this subsection may contain as part of their format a single order form, which may also serve as a post card. The order forms permitted in this subsection are in addition to and not in lieu of order forms which may be enclosed by virtue of any other provision.

b. 16 millimeter or narrower width films which must be positive prints in final form for viewing, and catalogs of such films, of 24 pages or more, at least 22 of which are printed, except when sent to or from commercial theaters;

c. Printed music, whether in bound form or in sheet form;

d. Printed objective test materials and accessories thereto used by or in behalf of educational institutions in the testing of ability, aptitude, achievement, interests and other mental and personal qualities with or without answers, test scores or identifying information recorded thereon in writing or by mark;

e. Sound recordings, including incidental announcements of recordings and guides or scripts prepared solely for use with such recordings:

Not more than three of the announcements permitted in this subsection may contain as part of their format a single order form, which may also serve as a post card. The order forms permitted in this subsection are in addition to and not in lieu of order forms which may be enclosed by virtue of any other provision.

f. Playscripts and manuscripts for books, periodicals and music;

g. Printed educational reference charts, permanently processed for preservation; and

h. Printed educational reference charts, including but not limited to (i) mathematical tables, (ii) botanical tables, (iii) zoological tables, and (iv) maps produced primarily for educational reference purposes.

i. Looseleaf pages and binders therefor, consisting of medical information for distribution to doctors, hospitals, medical schools, amd medical students.

j. Computer-readable media containing prerecorded information and guides or scripts prepared solely for use with such media.

400.0211 Single-piece

Single-piece special mail is special fourth-class mail not mailed under section 400.0212.

400.0212 Special Mail Presort Categories

Special rate mail sent under section 400.021 must meet the conditions of sections 400.0213 or 400.0214 to be eligible for the applicable presort level rate. Provisions for mailing nonidentical pieces are set forth in section 400.046.

400.0213 Level A Presort

Level A presort mailings must contain at least 500 pieces of identical weight presorted to 5-digit destination ZIP codes. The mail must be properly prepared in a manner prescribed by the Postal Service.

400.0214 Level B Presort

Level B presort mailings must contain at least 500 pieces of identical weight presorted to destination Bulk Mail Centers. The mail must be properly prepared in a manner prescribed by the Postal Service.

400.022 Library

a. Matter designated in subsection 400.0222, loaned or exchanged (including cooperative processing by libraries) between:

i. Schools or colleges, or universities;

ii. Public libraries, museums and herbaria, nonprofit religious, educational, scientific, philanthropic, agricultural, labor, veterans' or fraternal organizations or associations, or between such organizations and their members, readers or borrowers.

b. Matter designated in subsection 400.0223, mailed to or from schools, colleges, universities, public libraries, museums and herbaria and to or from nonprofit religious, educational, scientific, philanthropic, agricultural, labor, veterans' or fraternal organizations or associations; or

c. Matter designated in subsection 400.0224, mailed from a publisher or a distributor to a school, college, university or public library.

400.0221 Nonprofit organizations or associations are organizations or associations not organized for profit, none of the net income of which benefits any private stockholder or individual, and which meet the qualifications set forth below for each type of organization or association. The standard of primary purpose applies to each type of organization or association, except veterans' and fraternal. The standard of primary purposes requires that each type of organization or association be both organized and operated for the primary purpose.

The following are the types of organizations or associations which may qualify as authorized nonprofit organizations or associations:

a. Religious. A nonprofit organization whose primary purpose is one of the following:

i. To conduct religious worship;

ii. To support the religious activities of nonprofit organizations whose primary purpose is to conduct religious worship;

iii. To perform instruction in, to disseminate information about, or otherwise to further the teaching of particular religious faiths or tenets.

b. Educational. A nonprofit organization whose primary purpose is one of the following:

i. The instruction or training of the individual for the purpose of improving or developing his capabilities;

ii. The instruction of the public on subjects beneficial to the community.

An organization may be educational even though it advocates a particular position or viewpoint so long as it presents a sufficiently full and fair exposition of the pertinent facts to permit an individual or the public to form an independent opinion or conclusion. On the other hand, an organization is not educational if its principal function is the mere presentation of unsupported opinion.

c. Scientific. A nonprofit organization whose primary purpose is one of the following:

i. To conduct research in the applied, pure or natural sciences;

ii. To disseminate systematized technical information dealing with applied, pure or natural sciences.

d. Philanthropic. A nonprofit organization primarily organized and operated for purposes beneficial to the public. Philanthropic organizations include, but are not limited to, organizations which are organized for:

i. Relief of the poor and distressed or of the underprivileged;

ii. Advancement of religion;

iii. Advancement of education or science;

iv. Erection or maintenance of public buildings, monuments, or works;

v. Lessening of the burdens of Government;

vi. Promotion of social welfare by organizations designed to accomplish any of the above purposes or:

(a) To lessen neighborhood tensions;

(b) To eliminate prejudice and discrimination;

(c) To defend human and civil rights secured by law; or

(d) To combat community deterioration and juvenile delinquency.

e. Agricultural. A nonprofit organization whose primary purpose is the betterment of the conditions of those engaged in agricultural pursuits, the improvement of the grade of their products, and the development of a higher degree of efficiency in agriculture. The organization may further and advance agricultural interests through educational activities; the holding of agricultural fairs; the collection and dissemination of information concerning cultivation of the soil and its fruits or the harvesting of marine resources; the rearing, feeding, and management of livestock, poultry, and bees, or other activities relating to agricultural interests. The term agricultural nonprofit organization also includes any nonprofit organization whose primary purpose is the collection and dissemination of information or materials relating to agricultural pursuits.

f. Labor. A nonprofit organization whose primary purpose is the betterment of the conditions of workers. Labor organizations include, but are not limited to, organizations in which employees or workmen participate, whose primary purpose is to deal with employers concerning grievances, labor disputes, wages, hours of employment and working conditions.

g. Veterans'. A nonprofit organization of veterans of the armed services of the United States, or an auxiliary unit or society of, or a trust or foundation for, any such post or organization.

h. Fraternal. A nonprofit organization which meets all of the following criteria:

i. Has as its primary purpose the fostering of brotherhood and mutual benefits among its members;

ii. Is organized under a lodge or chapter system with a representative form of government;

iii. Follows a ritualistic format; and

iv. Is comprised of members who are elected to membership by vote of the members.

400.0222 Library mail defined in section 400.022a consists of:

a. Books consisting wholly of reading matter or scholarly bibliography or reading matter with incidental blank spaces for notations and containing no advertising other than incidental announcements of books;

b. Printed music, whether in bound form or in sheet form;

c. Bound volumes of academic theses in typewritten or other duplicated form;

d. Periodicals, whether bound or unbound

e. Sound recordings;

f. Other library materials in printed, duplicated or photographic form or in the form of unpublished manuscripts; and,

g. Museum materials, specimens, collections, teaching aids, printed matter and interpretative materials intended to inform and to further the educational work and interest of museums and herbaria.

400.0223 Library mail defined in section 400.022b consists of:

a. 16-millimeter or narrower width films; filmstrips; transparencies; slides; microfilms all of which must be positive prints in final form for viewing.

b. Sound recordings.

c. Museum materials, specimens, collections, teaching aids, printed matter, and interpretative materials intended to inform and to further the educational work and interests of museums and herbaria.

d. Scientific or mathematical kits, instruments or other devices.

e. Catalogs of the materials in section 400.0223 a through d and guides or scripts prepared solely for use with such materials.

400.0224 Library mail defined in section 400.022c consists of books, including books to supplement other books, consisting wholly of reading matter or scholarly bibliography or reading matter with incidental blank spaces for notations, and containing no advertising matter other than incidental announcements of books.

400.023 Bound Printed Matter

Bound printed matter mail is fourth-class mail weighing not more than ten pounds and which:

a. Consists of advertising, promotional, directory, or editorial material, or any combination thereof;

b. Is securely bound by permanent fastenings including, but not limited to, staples, spiral bindings, glue, and stitching; loose leaf binders and similar fastenings are not considered permanent;

c. Consists of sheets of which at least 90 percent are imprinted with letters, characters, figures or images or any combination of these, by any process other than handwriting or typewriting;

d. Does not have the nature of personal correspondence;

e. Is not a book eligible for mailing as fourth-class special mail;

f. Is not a book which would be eligible for mailing as fourth-class special mail but for the inclusion of advertising matter other than incidental announcements of books that either (i) is not permanently bound in the book itself or (ii) does not form an integral part of the book itself;

g. Is not stationery, such as pads of blank printed forms.

400.0231 Single Piece

Single piece bound printed matter mail is fourth-class bond printed matter which is not mailed or not eligible for mailing under section 400.0232.

400.0232 Bulk

Bulk bound printed matter mail is fourth-class bound printed matter mail consisting of properly prepared and presorted mailings of not less than 300 pieces prepared and presented in accordance with Postal Service regulations.

400.0233 Carrier Route Presort Category

Carrier route presort mailings must contain not less than 300 pieces of carrier route presorted mail. The mail must be properly prepared in the manner prescribed by the Postal Service.

400.03 Physical Limitations

400.030 Fourth-class mail may not exceed 70 pounds or 108 inches in length and girth combined.

400.04 Preparation of Mail

400.040 Postage must be paid as set forth in section 3000 of General Terms and Conditions.

400.041 Fourth-class mail mailed under sections 400.0202, 400.0212, 400.022 or 400.0232 must be separated or presorted in accordance with regulations prescribed by the Postal Service.

400.042 Fourth-class mail must be identified as precribed by the Postal Service.

400.043 Fourth-class mail may contain enclosures and attachments as authorized by the Postal Service or as described in section 400.021 a and e or as authorized under section 400.0441.

400.044 First-class mail or third-class mail other than specified in section 400.043 may be attached to or enclosed in fourth-class parcels if additional postage is paid for the attachment or enclosure as if it had been mailed separately. If postage is not paid at the appropriate first-class or third-class rate, the combined piece is subject to the next higher rate which can be applied to the attachment or enclosure. When first-class or third-class mail is attached to or enclosed with fourth-class mail, an appropriate marking must identify the presence and class of the enclosure or attachment.

400.0441 First-Class Mail, as defined in section 100.011(b) and (c), may be attached to or enclosed with fourth-class mail, with postage paid on the combined piece at the applicable fourth-class rate. The attachment or enclosure must be incidental to the piece to which it is attached or with which it is enclosed.

400.0442 First-Class Mail, which is not included under section 400.0441, or third-class mail other than specified in section 400.043 may be attached to or enclosed with fourth-class mail if additional postage is paid for the attachment or enclosure as if it had been mailed separately. If postage is not paid at the appropriate First-Class or third-class rate, the combined piece is subject to the next higher rate which can be applied to the attachment or enclosure. When First-Class or third-class mail is attached to or enclosed with fourth-class mail under this subsection, an appropriate marking must identify the presence and class of the enclosure or attachment.

400.045 Mailers of bulk fourth-class mail must submit appropriate mailing forms.

400.046 Fourth-class pieces which are not identical in size and weight may be mailed in accordance with sections 400.0202, 400.0212 and 400.0232 only when specific methods approved by the Postal Service for ascertaining and verifying postage are followed.

400.047 Fourth-class mail must contain the ZIP Code of the addressee when required by regulations prescribed by the Postal Service.

400.05 Deposit of Mail

400.051 Fourth-class mail must be deposited at places designated by the Postal Service.

400.06 Service

400.060 Fourth-class mail may receive deferred service.

400.07 Forwarding and Return

400.070 Undeliverable-as-addressed fourth-class mail will be forwarded on request of the addressee, returned on request of the mailer, or forwarded and returned on request of the mailer; undeliverable-as-addressed combined first-class and fourth-class pieces, or third-class and fourth-class pieces, will be forwarded, and undeliverable combined first-class and fourth-class pieces, or third-class and fourth-class pieces, will be returned as prescribed by the Postal Service. Additional charges when fourth-class mail is forwarded or returned from one post office to another will be based on the appropriate single-piece fourth-class rate.

400.08 Ancillary Services

400.080 Fourth-class mail will receive the following additional services upon payment of the appropriate fees:

	Classification Schedule
a. Address correction	SS-1
b. Certificates of mailing	SS-4
c. C.O.D	SS-6
d. Insured mail	SS-9
e. Special delivery	SS-17
f. Special handling	SS-18
g. Return receipts (parcel post only)	SS-16
h. Merchandise return	SS-20

400.081 Insurance, special delivery, special handling and C.O.D. services may not be used selectively for individual pieces mailed under section 400.020, unless the provisions of section 400.046 apply.

400.09 Rates and Fees

400.090 The rates and fees for fouth-class mail are set forth as follows:

	Rate schedule
a. Single-piece parcel post mail	400
b. Bulk parcel post mail	400
c. Single-piece special fourth-class mail	402
d. Special fourth-class presorted mail	402
e. Library mail	402
f. Single-piece bound printed matter	405
g. Bulk bound printed matter	406
h. Fees	1000

400.10 Authorizations and Licenses

400.100 A presort mailing fee as set forth in Rate Schedule 1000 must be paid once each year at each office of mailing by or for any person who mails presorted special fourth-class mail. Any person who engages a business concern or other individuals to mail presorted special fourth-class mail must pay the fee.

CLASSIFICATION SCHEDULE 500—EXPRESS MAIL

500.01 Definition

500.010 Any matter eligible for mailing may, at the option of the mailer, be mailed as Express Mail.

500.02 Description of Subclasses

500.020 Same Day Airport Service

Same Day Airport service is available between designated airport mail facilities.

500.021 Custom Designed Service

Custom Designed service is available between designated postal facilities or other designated locations for mailable matter tendered in accordance with a service agreement between the Postal Service and the mailer. Service under a service agreement shall be offered in a manner consistent with 39 U.S.C. 403(c).

500.0211 A service agreement shall set forth the following:

a. The scheduled place for each shipment tendered for service to each specific destination;

b. Scheduled place for claim, or delivery, at destination for each scheduled shipment;

c. Scheduled time of day for tender at origin and for claim or delivery at destination.

500.0212 Pickup at the mailer's premises, and/or delivery at an address other than the destination postal facility is provided under terms and conditions as prescribed by the Postal Service.

500.022 Next Day Service and Second Day Service

500.0221 Next Day and Second Day Services are available at designated retail postal facilities to designated destination facilities or locations for items tendered by the time or times prescribed by the Postal Service.

500.0222 Next Day Service is available for overnight delivery.

500.0223 Second Day Service is available for second day delivery.

500.0224 Pickup service is available for Next Day and Second Day Services under terms and conditions as prescribed by the Postal Service. Service shall be offered in a manner consistent with 39 U.S.C. 403(c).

500.03 Physical Limitations

500.030 Express Mail may not exceed 70 pounds or 108 inches in length and girth combined.

500.04 Conditions of Service

500.040 Evidence of Mailing

A receipt showing the time and date of mailing will be provided to the mailer upon acceptance of Express Mail by the Postal Service. This receipt serves as evidence of mailing.

500.041 Insurance and Indemnity

Express Mail is insured against loss, damage or rifling at no additional charge

Indemnity will be paid by the Postal Service as follows:

a. For document reconstruction the maximum liability is $50,000 per piece, up to $500,000 per occurrence regardless of the number of claimants, to be paid under terms and conditions prescribed by the Postal Service.

b. For merchandise the maximum liability is $500 to be paid under terms and conditions prescribed by the Postal Service.

c. For mailings valued at $15 or less, for negotiable items, or currency or bullion, the indemnity is $15 to be paid under terms and conditions prescribed by the Postal Service.

500.0411 Indemnity will not be paid by the Postal Service for loss, damage or rifling:

a. Of nonmailable matter;

b. Due to improper packaging;

c. Seizure by any agency of government; or,

d. Due to war, insurrection or civil disturbances.

500.042 Commencement of Service Agreement

Service provided pursuant to a service agreement shall commence not more than 10 days after the signed service agreement is tendered to the Postal Service.

500.043 Termination of Service Agreements

a. Express Mail service provided pursuant to a service agreement may be terminated by the Postal Service upon 10 days prior written notice to the mailer if:

1. Service cannot be provided for reasons beyond the control of the Postal Service or because of changes in Postal Service facilities or operations, or

2. The mailer fails to adhere to the terms of the service agreement or this schedule.

b. The mailer may terminate a service agreement, for any reason, by notice to the Postal Service.

500.044 Insurance Claims and Procedures

Claims for refunds of postage or insurance must be filed within the period of time and under terms and conditions prescribed by the Postal Service.

500.045 The Postal Service will refund the postage for Same Day Airport Express Mail not available for claim by the time specified, unless the delay is caused by:

a. Strikes or work stoppage;

b. Delay or cancellation of flights; or

c. Governmental action beyond the control of Postal Service or air carriers.

500.046 Except where a service agreement provides for claim, or delivery, of Custom Designed Express Mail more than 24 hours after scheduled tender at point of origin, the Postal Service will refund postage for such mail not available for claim, or not delivered, within 24 hours of mailing, unless the item was delayed by strike or work stoppage.

500.047 Unless the item was delayed by strike or work stoppage, the Postal Service will refund postage for Next Day Express Mail not available for claim or not delivered:

a. By 10:00 a.m., or earlier time(s) prescribed by the Postal Service, of the next delivery day in the case of Post Office-to-Post Office service;

b. By 3:00 p.m., or earlier time(s) prescribed by the Postal Service, of the next delivery day in the case of Post Office-to-Addressee service.

500.048 Unless the item was delayed by strike or work stoppage, the Postal Service will refund postage for Second Day Express Mail not available for claim or not delivered:

a. By 10:00 a.m., or earlier time(s) prescribed by the Postal Service, of the second delivery day in the case of Post Office-to-Post Office service;

b. By 3:00 p.m., or earlier time(s) prescribed by the Postal Service, of the second delivery day in the case of Post Office-to-Addressee service.

500.05 Deposit of Mail

500.050 Express Mail must be deposited at places designated by the Postal Service.

500.06 Service

500.060 Express Mail service provides a high speed, high reliability service.

500.0601 Same Day Airport Express Mail will be dispatched on the next available transportation to the destination airport mail facility.

500.0602 Custom Designed Express Mail will be available for claim or delivery as specified in the service agreement.

500.07 Forwarding and Return

500.070 When Express Mail is returned, or forwarded, as prescribed by the Postal Service, there will be no additional charge.

500.08 Rates and Fees

500.080 The rates for Express Mail are set forth in the following rate schedules:

	Rate schedule
a. Same Day Airport	500
b. Custom Designed	501
c. Next Day Post Office-to-Post Office	502
d. Second Day Post Office-to-Post Office	502
e. Next Day Post Office-to-Addressee	503
f. Second Day Post Office-to-Addressee	503

500.081 Except as provided in Rate Schedules 501, 502 and 503, postage on Express Mail is charged on each piece. For shipments tendered in Express Mail pouches under a service agreement, each pouch is a piece.

500.082 Express Mail postage rates are based on zones measured by great circle air miles between the airport serving the origin facility and the airport serving the destination facility, as follows:

Zone	Miles	
	Greater than—	Up to and including—
1 and 2	0	150
3	150	300
4	300	600
5	600	1000
6	1000	1400
7	1400	1800
8	1800	2400
9	2400	

500.090 The following services may be obtained in conjunction with mail sent under this classification schedule upon payment of applicable fees:

	Classification schedule
a. Address correction	SS-1
b. Return receipts	SS-16
c. C.O.D.	SS-6

CLASSIFICATION SCHEDULE SS-1—ADDRESS CORRECTION SERVICE

1.01 Definition

1.010 Address correction service is a service which provides the mailer with a method of obtaining the correct address, if available to the Postal Service, of the addressee or the reason for nondelivery.

1.02 Description of Service

1.020 Address correction service is available to mailers of postage prepaid mail of all classes. Second-class mail will receive address correction service.

1.021 Address correction service is not available for items addressed for delivery by military personnel at any military installation.

1.022 Address correction provides the following service to the mailer:

a. If the correct address is known to the Postal Service, the mailer is notified of both the old and the correct address.

b. If the item mailed cannot be delivered, the mailer will be notified of the reason for nondelivery.

1.03 Requirements of the Mailer

1.030 Mail, other than second class, sent under this classification schedule must bear a request for address correction service.

1.04 Fees

1.040 There is no charge for address correction service when the correction is provided incidental to the return of the mail piece to the sender.

1.041 A fee, as set forth in Rate Schedule SS-1, is charged for all other forms of address correction service.

CLASSIFICATION SCHEDULE SS-2—BUSINESS REPLY MAIL

2.01 Definition

2.010 Business reply mail is a service whereby business reply cards, envelopes, cartons and labels may be distributed by or for a business reply distributor for use by mailers for sending first-class mail without prepayment of postage to an address chosen by the distributor. A distributor is the holder of a business reply license.

2.02 Description of Service

2.020 The distributor guarantees payment on delivery of postage and fees for all returned business reply mail. Any distributor of business reply cards, envelopes, cartons, and labels under one license, for return to several addresses guarantees to pay postage and fees on any returns refused by any such addressee.

2.03 Requirements of the Mailer

2.030 Business reply cards, envelopes, cartons and labels must be preaddressed and bear business reply markings.

2.0301 Handwriting, typewriting or handstamping are not acceptable methods of preaddressing or marking business reply cards, envelopes, cartons and labels.

2.04 Fees

2.040 The fees for business reply mail are set forth in Rate Schedule SS-2.

2.041 To qualify as an active business reply mail advance deposit trust account, the account must be used solely for business reply mail and contain sufficient postage and fees due for returned business reply mail.

2.042 An accounting fee as set forth in Rate Schedule SS-2 must be paid each year for each advance deposit business reply account at each facility where the mail is to be returned.

2.05 Authorizations and Licenses

2.050 In order to distribute business reply cards, envelopes, cartons or labels, the distributor must obtain a license or licenses from the Postal Service and pay the appropriate fee as set forth in Rate Schedule SS-2.

2.0501 Except as provided in section 2.0502, the license to distribute business reply cards, envelopes, cartons or labels must be obtained at each office from which the mail is offered for delivery.

2.0502 If the business reply mail is to be distributed from a central office to be returned to branches or dealers in other cities, one license obtained from the post office where the central office is located may be used to cover all business reply mail.

2.051 The license to mail business reply mail may be cancelled for failure to pay business reply postage and fees when due, and for distributing business reply cards or envelopes which do not conform to prescribed form, style or size.

CLASSIFICATION SCHEDULE SS-3—CALLER SERVICE

3.01 Definition

3.010 Caller service is a service which permits a customer to obtain his mail addressed to a box number through a call window or loading dock.

3.02 Description of Service

3.020 Caller service uses post office box numbers as the address medium but does not actually use a lockbox.

3.021 Caller service is not available at certain postal facilities.

3.022 Caller service is provided to customers on the basis of mail volume received, and number of lockboxes rented at any one facility.

3.023 A customer may reserve a caller number.

3.024 Caller service cannot be used when the sole purpose is, by subsequently filing change of address orders, to have mail forwarded or transferred to another address by the Postal Service free of charge.

3.03 Fees

3.030 Fees for caller service are set forth in Rate Schedule SS-10.

CLASSIFICATION SCHEDULE SS-4—CERTIFICATE OF MAILING

4.01 Definition

4.010 Certificate of mailing service is a service which furnishes evidence of mailing.

4.02 Description of Service

4.020 Certificate of mailing service is available to mailers of matter sent under the classification schedule to any class of mail.

4.021 A receipt is not obtained upon delivery of the mail to the addressee. No record of mailing is maintained at the post office.

4.022 Additional copies of certificates of mailing may be obtained by the mailer.

4.03 Other Services

4.030 The following services, if applicable to the class of mail, may be obtained in conjunction with mail sent under this classification schedule upon payment of the applicable fees:

	Classification schedule
a. Parcel airlift	SS-13
b. Special delivery	SS-17
c. Special handling	SS-18

4.04 Fees

4.040 The fees for certificate of mailing service are set forth in Rate Schedule SS-4.

CLASSIFICATION SCHEDULE SS-5—CERTIFIED MAIL

5.01 Definition

5.010 Certified mail service is a service that provides a mailing receipt to the sender and a record of delivery at the office of address.

5.02 Description of Service

5.020 Certified mail service is provided for matter mailed under Classification Schedule 100.

5.021 If requested by the mailer, the time of acceptance by the Postal Service will be indicated on the receipt.

5.022 A record of delivery is retained at the office of delivery for a specified period of time.

5.023 If the initial attempt to deliver the mail is not successful, a notice of arrival is left at the mailing address.

5.024 A receipt of mailing may be obtained only if the article is mailed at a post office, branch or station, or given to a rural carrier.

5.025 Additional copies of the original mailing receipt may be obtained by the mailer.

5.03 Deposit of Mail

5.030 Certified mail must be deposited in a manner specified by the Postal Service.

5.04 Other Services

5.040 The following services may be obtained in conjunction with mail sent under this classification schedule upon payment of the applicable fees:

	Classification schedule
a. Restricted delivery	SS-15
b. Return receipt	SS-16
c. Special delivery	SS-17

5.05 Fees

5.050 The fees for certified mail service are set forth in Rate Schedule SS-5.

CLASSIFICATION SCHEDULE SS-6—COLLECT ON DELIVERY SERVICE

6.01 Definition

6.010 Collect on Delivery (C.O.D.) service is a service which allows a mailer to mail an article for which he has not been paid and have the price, the cost of postage and fees, and anticipated or past due charges collected by the Postal Service from the addressee when the article is delivered.

6.02 Description of Service

6.020 C.O.D. service is available for collection of $500 or less upon the delivery of postage prepaid mail sent under the following classification schedules:

	Classification schedule
a. First-class mail	100
b. Third class (single piece only)	300
c. Fourth-class mail	400
d. Express Mail	500

6.0201 Service under this schedule is *not* available for:

a. Collection agency purposes;

b. Return of merchandise about which some dissatisfaction has arisen, unless the new addressee has consented in advance to such return;

c. Sending only bills or statements of indebtedness, even though the sender may establish that the addressee has agreed to collection in this manner; however, when the legitimate C.O.D. shipment consisting of merchandise or bill of lading, is being mailed, the balance due on a past or anticipated transaction may be included in the charges on a C.O.D. article, provided the addressee has consented in advance to such action;

d. Parcels containing moving-picture films mailed by exhibitors to moving-picture manufacturers, distributors, or exchanges;

e. Goods which have not been ordered by the addressee.

6.021 C.O.D. service provides the mailer with insurance against loss, rifling and damage to the article as well as failure to receive the amount collected from the addressee. This provision insures only the receipt of the instrument issued to the mailer after payment of C.O.D. charges, and is not to be construed to make the Postal Service liable upon any such instrument other than a Postal Service money order.

6.022 A receipt is issued to the mailer for each piece of C.O.D. mail. Additional copies of the original mailing receipt may be obtained by the mailer.

6.023 Delivery of C.O.D. mail will be made in a manner specified by the Postal Service. If a delivery to the mailing address is not attempted or if a delivery attempt is unsuccessful, a notice of arrival will be left at the mailing address.

6.024 The mailer may receive a notice of nondelivery if the piece mailed is endorsed appropriately.

6.025 The mailer may designate a new addressee or alter the C.O.D. charges by submitting the appropriate form and by paying the appropriate fee as set forth in Rate Schedule SS-6.

6.026 A claim for complete loss may be filed by the mailer only. A claim for damage or for partial loss may be filed by either the mailer or addressee.

6.027 C.O.D. indemnity claims must be filed within a specified period of time from the date the article was mailed.

6.03 Requirements of the Mailer

6.030 C.O.D. mail must be identified as C.O.D. mail.

6.04 Deposit of Mail

6.040 C.O.D. mail must be deposited in a manner specified by the Postal Service.

6.05 Forwarding and Return

6.050 A mailer of C.O.D. mail guarantees to pay any return postage, unless otherwise specified on the piece mailed.

6.051 For C.O.D. mail sent as third- or fourth-class mail, postage at the applicable rate will be charged to the addressee:

a. When an addressee, entitled to delivery to the mailing address under Postal Service regulations, requests delivery of C.O.D. mail which was refused when first offered for delivery;

b. For each delivery attempt, to an addressee entitled to delivery to the mailing address under Postal Service regulations, after the second such attempt.

6.06 Other Services

6.060 The following services, if applicable to the class of mail, may be obtained in conjunction with mail sent under this classification schedule upon payment of the applicable fee:

	Classification schedule
a. Registered mail, if sent as first class	SS-14
b. Restricted delivery	SS-15
c. Special delivery	SS-17
d. Special handling	SS-18

6.07 Fees

6.070 Fees for C.O.D. service are set forth in Rate Schedule SS-6.

EDITOR'S NOTE: Former Classification Schedule SS-7, which provided for a fee for dead mail return service, has been deleted. See Docket No. R84-1. For the Postal Service's regulations dealing with dead mail, see DMM § 159.5.

CLASSIFICATION SCHEDULE SS-8—DOMESTIC POSTAL MONEY ORDERS

8.01 Definition

8.010 Money order service is a service that provides the customer with an instrument for payment of a specified sum of money.

8.02 Description of Service

8.020 The maximum value for which a domestic postal money order may be purchased is $700. Other restrictions on the number or dollar value of postal money order sales, or both, may be imposed in accordance with regulations prescribed by the Postal Service.

8.021 A receipt of purchase is provided at no additional cost.

8.022 The Postal Service will replace money orders that are spoiled or incorrectly prepared, regardless of who caused the error, without charge *if replaced on the date originally issued.*

8.0221 If a replacement money order is issued *after the date of original issue* because the original was spoiled or incorrectly prepared, the applicable money order fee may be collected from the customer.

8.023 Inquiries and/or claims may be filed by the purchaser, payee, or endorsee.

8.03 Fees

8.030 The fees for domestic postal money orders are set forth in Rate Schedule SS-8.

CLASSIFICATION SCHEDULE SS-9—INSURED MAIL

9.01 Definition

9.010 Insured mail service is a service that provides the mailer with indemnity for loss of, rifling of, or damage to items sent under this classification schedule.

9.02 Description of Service

9.020 The maximum liability of the Postal Service under this schedule is $500.

9.021 Insured mail service is available for mail sent under the following classification schedules:

	Classification schedule
a. First-class mail, if containing matter which may be mailed as third- or fourth-class mail	100
b. Third class (single piece only)	300
c. Fourth-class	400

9.022 This service is not available for matter offered for sale, addressed to prospective purchasers who have not ordered or authorized their sending. If such matter is received in the mail, payment will not be made for loss, rifling, or damage.

9.023 The mailer is issued a receipt for each item mailed. For items insured for more than $25, a receipt of delivery is obtained by the Postal Service.

9.024 For items insured for more than $25, a notice of arrival is left at the mailing address when the first attempt at delivery is unsuccessful.

9.025 A claim for complete loss may be filed by the mailer only. A claim for damage or for partial loss may be filed by either the mailer or addressee.

9.026 A claim for damage or loss on a parcel sent merchandise return (SS-20) may only be filed by the purchaser of the insurance.

9.027 Indemnity claims for insured mail must be filed within a specified period of time from the date the article was mailed.

9.028 Additional copies of the original mailing receipt may be obtained by the mailer, upon payment of the applicable fee set forth in Rate Schedule SS-9.

9.03 Deposit of Mail.

9.030 Insured mail must be deposited in a manner specified by the Postal Service.

9.04 Forwarding and Return

9.040 By insuring an item, the mailer guarantees forwarding and return postage unless instructions on the piece mailed indicate that it not be forwarded or returned.

9.041 Mail undeliverable as addressed sent under this schedule will be returned to the sender as specified by the sender or by the Postal Service.

9.05 Other Services

9.050 The following services, if applicable to the class of mail, may be obtained in conjunction with mail sent under this classification schedule upon payment of the applicable fees:

	Classification schedule
a. Parcel Airlift	SS-13
b. Restricted delivery (for items insured for more than $25)	SS-15
c. Return receipt (for items insured for more than $25)	SS-16
d. Special delivery	SS-17
e. Special handling	SS-18
f. Merchandise return (shippers only)	SS-20

9.06 Fees

9.060 The fees for insured mail service are set forth in Rate Schedule SS-9.

CLASSIFICATION SCHEDULE SS-10—POST OFFICE BOX SERVICE

10.01 Definition

10.010 Post office box service is a service which provides the customer with a private, locked receptacle for the receipt of his mail during the hours when the lobby of a postal facility is open.

10.02 Description of Service

10.020 The Postal Service may limit the number of post office boxes occupied by any one customer.

10.021 A post office box holder may request the Postal Service to deliver all mail properly addressed to him through the post office box. If the post office box is located at the post office indicated on the piece, it will be transferred without additional charge, in accordance with existing regulations.

10.022 Post office box service cannot be used when the sole purpose is, by subsequently filing change of address orders, to have mail forwarded or transferred to another address by the Postal Service free of charge.

10.03 Fees

10.030 Fees for post office box service are set forth in Rate Schedule SS-10.

10.031 In postal facilities primarily serving academic institutions or the students of such institutions, periods of rental and fees for post office boxes are:

Period for box rentals	Fee
95 days or less	¼ semi-annual fee.
96 to 140 days	¾ semi-annual fee.
141 to 190 days	Full semi-annual fee.
191 to 230 days	1¼ semi-annual fee.
231 to 270 days	1½ semi-annual fee.
271 days to full year	Full annual fee.

10.032 No refunds will be made for boxes rented under section 10.031. For purposes of this classification schedule SS-10, the full annual fee is twice the amount of the semi-annual fee.

CLASSIFICATION SCHEDULE SS-11—MAILING LIST SERVICES

11.01 Definition

11.010 Mailing list services include:

a. Correction of mailing lists;

b. Change of address information for election boards and registration commissions;

c. ZIP coding of mailing lists; and

d. Arrangement of address cards in the sequence of delivery.

11.0101 Correction of mailing list service provides current information concerning name and address mailing lists or correct information concerning occupant mailing lists.

11.0102 ZIP coding of mailing lists services is a service identifying ZIP code addresses in areas served by multi-ZIP coded postal facilities.

11.02 Description of Service

11.020 Corrections of mailing list service is available only to the following owners of name and address or occupant mailing lists:

a. Members of Congress;

b. Federal agencies;

c. State government departments;

d. Municipalities;

e. Religious organizations;

f. Fraternal organizations;

g. Recognized charitable organizations;

h. Concerns or persons who solicit business by mail;

11.0201 The following corrections will be made to *name and address lists:*

a. Names to which mail cannot be delivered or forwarded will be deleted;

b. Incorrect house, rural, or post office box numbers will be corrected;

c. When permanent forwarding orders are on file for customers who have moved, new addresses including ZIP codes will be furnished;

d. New names will not be added to the list.

11.0202 The following corrections will be made to occupant lists:

a. Numbers representing incorrect or nonexistent street addresses will be deleted;

b. Business or rural route addresses will be distinguished if known;

c. Corrected cards or sheets will be grouped by route;

d. Street address numbers will not be added or changed.

11.0203 Corrected lists will be returned to customers at no additional charge.

11.021 Residential change-of-address information is available only to election boards or registration commissions for obtaining, if known to the Postal Service, the current address of an addressee.

11.022 ZIP coding of mailing list service provides that addresses will be sorted to the finest possible ZIP code sortation.

11.0221 Gummed labels, wrappers, envelopes or postal or post cards indicative of one-time use will not be accepted as mailing lists.

11.023 Sequencing of address cards service provides for the removal of incorrect addresses, notation of missing addresses and addition of missing addresses.

11.03 Requirements of Customer

11.030 A customer desiring correction of a mailing list or arrangement of address cards in sequence of carrier delivery must submit the list or cards as prescribed by regulation.

11.04 Fees

11.040 The fees for mailing list services are set forth in Rate Schedules SS-11a, SS-11b, SS-11c and SS-11d.

CLASSIFICATION SCHEDULE SS-12—ON-SITE METER SETTING

12.01 Definition

12.010 On-site meter setting service is a service whereby the Postal Service will service a postage meter at the mailer's or meter manufacturer's premises.

12.02 Description of Service

12.020 On-site meter setting service is available on a scheduled basis, except that meter setting may be done on an emergency basis for those customers enrolled in the scheduled on-site meter setting program.

12.03 Fees

12.030 The fees for on-site meter setting service are set forth in Rate Schedule SS-12.

CLASSIFICATION SCHEDULE SS-13—PARCEL AIRLIFT (PAL)

13.01 Definition

13.010 Parcel airlift service is a service that provides for air transportation of parcels on a space available basis to or from military post offices outside the contiguous 48 states.

13.02 Description of Service

13.020 Parcel airlift service is available for mail sent under the following classification schedules:

	Classification schedule
a. Third-class mail	300
b. Fourth-class mail	400

13.03 Physical Limitations

13.030 The minimum physical limitations established for the mail sent under the classification schedule for which postage is paid apply to parcel airlift mail. In no instance may the parcel exceed 30 pounds in weight, or 60 inches in length and girth combined.

13.04 Requirements of the Mailer

13.040 Mail sent under this schedule must be endorsed as prescribed by regulation.

13.05 Deposit of Mail

13.050 PAL mail must be deposited in a manner specified by the Postal Service.

13.06 Forwarding and Return

13.060 PAL mail sent for delivery outside the contiguous 48 states is forwarded as set forth in section 1000.03 of the General Terms and Conditions. PAL mail sent for delivery within the contiguous 48 states is forwarded or returned as set forth in sections 300.07 and 400.07 as appropriate.

13.07 Other Services

13.070 The following services, if applicable to the class of mail, may be obtained in conjunction with mail sent under this classification schedule upon payment of the applicable fees:

	Classification schedule
a. Certificate of mailing	SS-4
b. Insured mail	SS-9
c. Restricted delivery (if insured for more than $25)	SS-15
d. Return receipt (if insured for more than $25)	SS-16
e. Special delivery (if mailed for delivery within the 48 contiguous states)	SS-17
f. Special handling	SS-18

13.08 Fees

13.080 The fees for parcel airlift service are set forth in Rate Schedule SS-13.

CLASSIFICATION SCHEDULE SS-14—REGISTERED MAIL

14.01 Definition

14.010 Registered mail is a service which provides added protection to mail sent under this Domestic Mail Classification Schedule and optional indemnity in case of loss or damage.

14.02 Description of Service

14.020 Registered mail service is available to mailers of prepaid mail sent under Classification Schedule 100 except that Registered mail must meet the minimum requirements for length and width regardless of thickness.

14.021 Registered mail service provides optional insurance up to a maximum of $25,000.

14.022 There is no limit on the value of articles sent under this classification schedule.

14.023 Registered mail service is not available for:

a. All delivery points because of the high security required for registered mail; in addition, not all delivery points will be available for Registry and liability is limited in some geographic areas.

b. Mail of any class sent in combination with first-class mail;

c. Two or more articles tied or fastened together, unless the envelopes are enclosed in the same envelope or container.

14.024 The following services are provided as part of registered mail service at no additional cost to the mailer:

a. A receipt;

b. A record of delivery, retained by the Postal Service for a specified period of time;

c. A notice of arrival will be left at the mailing address if the initial delivery attempt is unsuccessful;

d. When registered mail is undeliverable-as-addressed and cannot be forwarded, a notice of nondelivery is provided.

14.025 A claim for complete loss of insured articles may be filed by the mailer only. A claim for damage or for partial loss of insured articles may be filed by either the mailer or addressee.

14.026 Indemnity claims for registered mail on which optional insurance has been elected must be filed within a specified period of time from the date the article was mailed.

14.027 No indemnity is paid on any matter registered free.

14.03 Deposit of Mail

14.030 Registered mail must be deposited in a manner specified by the Postal Service.

14.04 Service

14.040 Registered mail is provided maximum security.

14.05 Forwarding and Return

14.050 Registered mail is forwarded and returned without additional registry charge.

14.06 Other Services

14.060 The following services may be obtained in conjunction with mail sent under this classification schedule upon payment of applicable fees:

	Classification schedule
a. Collect on delivery	SS-4
b. Restricted delivery	SS-15
c. Return receipt	SS-16
d. Special delivery	SS-17
e. Merchandise return (shippers only)	SS-20

14.07 Fees

14.070 The fees for registered mail and related optional indemnity purchase are set forth in Rate Schedule SS-14.

CLASSIFICATION SCHEDULE SS-15—RESTRICTED DELIVERY

15.01 Definition

15.010 Restricted delivery service is a service that provides a means by which a mailer may direct that delivery will be made only to the addressee or to someone authorized by the addressee to receive his mail.

15.02 Description of Service

15.020 This service is available for mail sent under the following classification schedules:

	Classification schedule
a. Certified mail	SS-6
b. C.O.D. mail	SS-4
c. Insured mail if insured for more than $25	SS-9
d. Registered mail	SS-14

15.021 Restricted delivery service is available to the mailer at the time of mailing or after mailing.

15.022 Restricted delivery service is available only to natural persons specified by name.

15.023 A record of delivery will be retained by the Postal Service for a specified period of time.

15.024 Failure to provide restricted delivery service when requested after mailing, due to prior delivery, is not grounds for refund of the fee or communications charges.

15.03 Fees

15.030 The fees for restricted delivery service are set forth in Rate Schedule SS-15.

CLASSIFICATION SCHEDULE SS-16—RETURN RECEIPTS

16.01 Definition

16.010 Return receipt service is a service which provides evidence to the mailer that an article has been received at the delivery address.

16.02 Description of Service

16.020 Return receipt service is available for mail sent under the following classification schedules:

	Classification schedule
a. Certified mail	SS-5
b. C.O.D. mail	SS-6
c. Insured mail if insured for more than $50	SS-9
d. Registered mail	SS-14
e. Express Mail	500
f. First Class (Priority Mail only)	100
g. Third class (merchandise only)	300
h. Fourth class (parcel post only)	400

16.021 Return receipt service is available at the time of mailing or after mailing.

16.0211 Mailers requesting return receipt service at the time of mailing will be provided, as appropriate:

a. The signature of the addressee or his agent and the date delivered, or

b. The signature of the addressee or his agent, the date delivered and the address of delivery.

16.0212 Mailers requesting return receipt service *after mailing* will be provided the date of delivery and the name of the person who signed for the article.

16.022 If the mailer does not receive a return receipt within a specified period of time from the date of mailing, the mailer may request a duplicate return receipt. No fee is charged for a duplicate return receipt.

16.03 Fees

16.030 The fees for return receipt service are set forth in Rate Schedule SS-16.

CLASSIFICATION SCHEDULE SS-17—SPECIAL DELIVERY

17.01 Definition

17.01 Special delivery service is a service that provides for preferential handling in dispatch and transportation, and delivery of mail as soon as practicable after arrival at the addressee's post office.

17.02 Description of Service

17.020 Special delivery service is available for mail sent under the following classification schedules:

	Classification schedule
a. First-class mail	100
b. Second-class mail	200
c. Third-class mail (single piece only)	300
d. Fourth-class mail	400

17.021 Special delivery is made only to addresses where it is known that such delivery can be made.

17.022 Special delivery mail is delivered during prescribed hours in addition to regular carrier delivery hours.

17.023 If delivery cannot be made a notice of arrival is left at the address.

17.03 Requirements of the Mailer

17.030 Mail sent under this classification schedule must be identified as prescribed by regulation.

17.04 Deposit of Mail

17.040 Special delivery mail must be deposited in a manner prescribed by the Postal Service.

17.05 Forwarding and Return

17.050 Special delivery mail which is forwarded or returned does not receive special delivery service unless the special delivery fee has been guaranteed, or if a forwarding order had been given by the addressee at the office of original address in advance of the arrival of the mail.

17.06 Other Services

17.060 The following services, if applicable to the class of mail, may be obtained in conjunction with mail sent under this classification schedule upon payment of the applicable fees:

	Classification schedule
a. Certificate of mailing	SS-4
b. Certified mail	SS-5
c. C.O.D. mail	SS-6
d. Insured mail	SS-9
e. Parcel airlift	SS-13
f. Registered mail	SS-14

17.07 Fees

17.070 The fees for special delivery service are set forth in Rate Schedule SS-17.

CLASSIFICATION SCHEDULE SS-18—SPECIAL HANDLING

18.01 Definition

18.010 Special handling service is a service that provides preferential handling to the extent practicable during dispatch and transportation.

18.02 Description of Service

18.020 Special handling service is available for mail sent under the following classification schedules:

	Classification schedule
a. First-class mail	100
b. Third-class (single piece only)	300
c. Fourth-class mail	400

18.021 Special handling (or special delivery) service is mandatory for matter which requires special attention in handling, transportation and delivery.

18.03 Requirements of the Mailer

18.030 Mail sent under this schedule must be identified as prescribed by regulation.

18.04 Deposit of Mail

18.040 Mail sent under this schedule must be deposited in a manner prescribed by the Postal Service.

18.05 Forwarding and Return

18.050 If undeliverable as addressed, special handling mail that is forwarded to the addressee is given special handling without requiring payment of an additional handling fee. However, additional postage at the regular third- or fourth-class rate is collected on delivery.

18.06 Other Services

18.060 The following services may be obtained in conjunction with mail sent under this classification schedule upon payment of the applicable fees:

	Classification schedule
a. C.O.D. mail	SS-6
b. Insured mail	SS-9
c. Parcel airlift	SS-13
d. Merchandise return (shippers only)	SS-20

18.07 Fees

18.070 The fees for special handling service are set forth in Rate Schedule SS-18.

CLASSIFICATION SCHEDULE SS-19—STAMPED ENVELOPES

19.01 Definition

19.010 Plain stamped envelopes and printed stamped envelopes are envelopes with postage thereon offered for sale by the Postal Service.

19.02 Description of Service

19.020 Stamped envelopes are available for:

a. First-class single-piece mail within the first rate increment.

b. Third-class bulk nonprofit mail mailed at the minimum per-piece rate. Such envelopes may be purchased only by authorized nonprofit organizations or associations.

19.021 Printed stamped envelopes may be obtained by special request.

19.03 Fees

19.030 The fees for stamped envelopes are set forth in Rate Schedule SS-19.

CLASSIFICATION SCHEDULE SS-20—MERCHANDISE RETURN

20.01 Definition

20.010 Merchandise return service provides a method whereby a shipper may authorize its customers to return a parcel with the postage paid by the shipper. A shipper is the holder of a merchandise return permit.

20.02 Description of Service

20.020 Merchandise return service is available to all shippers who obtain the necessary permit and who guarantee payment of postage and fees for all returned parcels.

20.021 Merchandise return service is available for the return of any parcel under the following classification schedules.

	Classification schedule
a. First-class mail	100
b. Third-class mail	300
c. Fourth-class mail	400

20.03 Requirements of the Mailer

20.030 Merchandise return labels must be prepared at the shipper's expense to specifications set forth by the Postal Service.

20.031 The shipper must furnish its customer with an appropriate merchandise return label.

20.04 Other Services

20.040 The following services may be purchased in conjunction with Merchandise Return Service:

	Classification schedule
a. Certificate of mailing	SS-4
b. Insured Mail	SS-9
c. Registered mail	SS-14
d. Special handling	SS-16

20.041 Only the shipper may purchase insurance service for the merchandise return parcel by indicating the amount of insurance on the merchandise return label before providing it to the customer. The customer who returns a parcel to the shipper under merchandise return service may not purchase insurance.

20.05 Fees

20.050 The fee for the merchandise return service is set forth in Rate Schedule SS-20. This fee is paid by the shipper.

20.06 Authorizations and Licenses

20.060 A permit fee as set forth in Rate Schedule 1000 must be paid once each calendar year by shippers utilizing merchandise return service.

20.061 The merchandise return permit may be cancelled for failure to maintain sufficient funds in a trust account to cover postage and fees on returned parcels or for distributing merchandise return labels that do not conform to Postal Service specifications.

GENERAL TERMS AND CONDITIONS

1000 Delivery of Mail

1000.01 Delivery Services

1000.010 The Postal Service provides the following modes of delivery:

a. Caller service. The fees for caller service are set forth in Rate Schedule SS-10.

b. Carrier delivery service.

c. General delivery.

d. Lockbox service. The fees for lockbox service are set forth in Rate Schedule SS-10.

1000.02 Conditions of Delivery

1000.020 Except as provided in section 1000.021, mail will be delivered as addressed unless the Postal Service is instructed otherwise by the addressee in writing.

1000.021 The addressee may control delivery of his mail. The addressee may refuse to accept a piece of mail at the time it is offered for delivery or after delivery by returning it unopened to the Postal Service except as provided below. The addressee or his representative may read and copy the name of the sender of registered, insured, certified and C.O.D. mail prior to accepting delivery. Upon signing the delivery receipt the piece may not be returned to the Postal Service without the applicable postage and fees affixed.

1000.022 If a signed receipt is required, mail will be delivered to the addressee (or competent member of his family), to persons who customarily receive his mail or to one authorized in writing to receive the addressee's mail.

1000.023 Mail addressed to several persons may be delivered to any one of them.

1000.0231 When two or more persons make conflicting orders for delivery for the same mail, the mail shall be delivered as determined by the Postal Service.

1000.024 Mail may be delivered to a commercial mail receiving agency on behalf of another person. In consideration of delivery of mail to the commercial agent, the addressee and the agent are considered to agree that:

a. No change of address order will be filed with the post office when the agency relationship is terminated;

b. When remailed by the commercial agency, the mail is subject to payment of new postage.

1000.025 Mail addressed to governmental units, private organizations, corporations, unincorporated firms or partnerships, persons at institutions (including but not limited to hospitals and prisons), or persons in the military is delivered as addressed or to an authorized agent.

1000.026 Mail will be held for a specified period of time at the office of address upon request of the addressee, unless the mail:

a. Has contrary retention instructions;

b. Is perishable; or

c. Is registered, C.O.D., insured, or certified for which the normal retention period expires before the end of the specified holding period.

1000.03 Forwarding and Return

1000.030 Forwarding is the transfer of undeliverable-as-addressed mail to an address other than the one originally placed on the mail piece.

1000.031 Return is the delivery of mail to the sender.

1000.032 The provisions of sections 100.07, 200.07, 250.07, 300.07, 400.07, and 500.07 apply to forwarding and return.

1000.033 All post offices will honor change of address orders for a period of time specified by the Postal Service.

1000.034 When mail is forwarded due to Postal Service adjustments (such as, but not limited to, the discontinuance of the post office of original address, establishment of rural carrier service, conversion to city delivery service from rural, readjustment of delivery districts, or renumbering of houses and renaming of streets), it is forwarded without charge for a period of time specified by the Postal Service.

2000 Preparation of Mail

2000.01 Packaging

2000.010 Mail must be packaged so that:

a. The contents will be protected against deterioration or degradation;

b. The contents will not be likely to damage other mail, Postal Service employees or property, or to become loose in transit;

c. The package surface must be able to retain postage indicia and address markings;

d. It is marked by the mailer with a material which is not readily water soluble nor which can be easily rubbed off or smeared, and the marking will be sharp and clear.

2000.011 Paper used in the preparation of envelopes may not be of a brilliant color.

2000.012 Envelopes must be prepared with paper strong enough to withstand normal handling.

3000 Postage and Fees

3000.01 Payment of Postage

3000.010 Postage must be fully prepaid on all mail at the time of mailing, except as authorized by law or this Schedule.

3000.0101 Except as authorized by law or this Schedule, mail deposited without prepayment of sufficient postage shall be delivered to the addressee subject to payment of deficient postage, returned to the sender, or otherwise disposed of. Mail deposited without any postage affixed will be returned to the sender without any attempt at delivery.

3000.02 Methods for Paying Postage and Fees

3000.020 Postage for all mail may be prepaid by postage meter, adhesive stamps, or permit imprint, unless otherwise limited by regulation.

3000.021 The following methods of paying postage and fees required prior authorization from the Postal Service:

a. Permit imprint,

b. Postage meter,

c. Precancelled stamps, precancelled envelopes, and mailer's precancelled postmarks.

3000.0211 Fees for authorization to use a permit imprint are set forth in Rate Schedule 1000.

3000.0212 No fee is charged for authorization to use a postage meter. Fees for setting postage meters are set forth in Rate Schedule SS-12.

3000.0213 No fee is charged for authorization to use precancelled stamps, precancelled envelopes or mailer's precancelled postmark.

3000.022 Matter authorized for mailing without prepayment of postage must bear markings identifying the class of mail service. Matter so marked will be billed at the applicable rate of postage set forth in this Schedule. Matter not so marked will be billed at the applicable first-class rate of postage.

3000.023 Fees for special services may be prepaid in any manner appropriate for the class of mail indicated or as otherwise prescribed by regulation.

3000.03 Refund of Postage

3000.030 When postage and special service fees have been paid on mail for which no service is rendered for the postage or fees paid, or collected in excess of the lawful rate, a refund may be made.

3000.0301 There shall be no refund for registered, C.O.D., and insured fees when the article is later withdrawn by the mailer.

3000.031 In cases involving returned articles improperly accepted because of excess size or weight, a refund may be made.

4000 Postal Zones

4000.010 Except as provided in Classification Schedule 500, in the determination of postal zones, the earth is considered to be divided into units of area thirty minutes square, identical with a quarter of the area formed by the intersecting parallels of latitude and meridians of longitude. The distance between these units of area is the basis of the postal zones which are defined as follows:

The local zone applies to mail mailed at any post office for delivery at that office; at any city letter carrier office or at any point within its delivery limits for delivery by carriers from that office; at any office from which a rural route starts for delivery on the same route; and on a rural route for delivery at the office from which the route starts or on any rural route starting from that office.

The first zone includes all territory within the quadrangle of entry in conjunction with every contiguous quadrangle, representing an area having a mean radial distance of approximately 50 miles from the center of a given unit of area. The first zone also applies to mail between two post offices in the same sectional center.

The second zone includes all units of area outside the first zone lying in whole or in part within a radius of approximately 150 miles from the center of a given unit of area.

The third zone includes all units of area outside the second zone lying in whole or in part within a radius of approximately 300 miles from the center of a given unit of area.

The fourth zone includes all units of area outside the third zone lying in whole or in part within a radius approximately 600 miles from the center of a given unit of area.

The fifth zone includes all units of area outside the fourth zone lying in whole or in part within a radius of approximately 1,000 miles from the center of a given unit of area.

The sixth zone includes all units of area outside the fifth zone lying in whole or in part within a radius of approximately 1,400 miles from the center of a given unit of area.

The seventh zone includes all units of area outside the sixth zone lying in whole or in part within a radius of approximately 1,800 miles from the center of a given unit of area.

The eighth zone includes all units of area outside the seventh zone.

4000.011 The distance upon which zones are based shall be measured from the center of the unit of area containing the dispatching sectional center facility or multi-ZIP coded post office not serviced by a sectional center facility. A post office of mailing and a post office of delivery shall have the same zone relationship as their respective sectional center facilities or multi-ZIP coded post offices, but this shall not cause two post offices to be regarded as within the same local zone.

4000.012 Except as provided below, rates according to zone apply for zone-rated mail sent between Postal Service facilities including armed forces post offices, wherever located.

a. The rates of postage for zone-rated mail transported between the United States, the Canal Zone, Puerto Rico or the possessions or territories of the United States, including the Trust Territory of the Pacific Islands, on the one hand, and Army, Air Force and Fleet Post Offices on the other, or among the latter, shall be applicable zone rates for mail between the place of mailing or delivery and the city of the postmaster serving the Army, Air Force or Fleet Post Office concerned, subject to the following exception:

i. The rates of postage for zone-rated mail which is mailed at or addressed to an armed forces post office and which is transported directly to or from armed forces post offices at the expense of the Department of Defense, without transiting any of the 48 contiguous states (including the District of Columbia), shall be the applicable local zone rate; provided, however, that if the distance from the place of mailing to the embarkation point or the distance from the point of debarkation to the place of delivery is greater than the local zone for such mail, postage shall be assessed on the basis of the distance from the place of mailing to the embarkation point or the distance from the point of debarkation to the place of delivery of such mail, as the case may be.

(a) The word "transiting" does not include enroute transfers at coastal gateway cities which are necessary to transport military mail directly between military post offices.

5000 Privacy of Mail

5000.010 Matter not paid as first-class mail or Express Mail rates must be wrapped or secured in the manner prescribed by the Postal Service so that the contents may be examined. Mailing of sealed items as other than first-class mail or Express Mail is considered consent by the sender to the postal inspection of the contents.

5000.011 Matter mailed as first-class mail or Express Mail shall be treated as mail which is sealed against postal inspection and shall not be opened except as authorized by law.

6000 Mailable Matter

6000.010 Mailable matter is any matter which:

a. Is not mailed in contravention of 39 U.S.C. Chapter 30, or of 17 U.S.C. 109; and

b. While in the custody of the Postal Service is not likely to become damaged itself, to damage other pieces of mail, to cause injury to Postal Service employees or to damage Postal Service property;

c. Is not mailed contrary to any special conditions or limitations placed on transportation or movement of certain articles, when imposed under law by the U.S. Department of the Treasury; U.S. Department of Agriculture; U.S. Department of Commerce; U.S. Department of Health and Human Services, U.S. Department of Transportation; and any other Federal department or agency having legal jurisdiction.

6000.011 The following minimum size standards apply to all mailable matter: (1) All items must be at least 0.007 inches thick, and (2) all items, other than keys and identification devices, which are 0.25 inch thick or less must be (a) rectangular in shape, (b) at least 3.5 inches in width, and (c) at least 5 inches in length.

RATE SCHEDULES

CALCULATION OF POSTAGE

When a rate schedule contains per piece and per pound rates, the postage shall be the sum of the charges produced by those rates.

When a rate schedule contains a minimum-per-piece rate and a pound rate, the postage shall be the greater of the two.

When the computation of postage yields a fraction of a cent in the charge, the next higher whole cent must be paid.

RATE SCHEDULE 100—FIRST-CLASS MAIL

Mail type	Postage rate unit	Rate		
		Regular (cents)	Presorted [1] (cents)	
			5-digit	Carrier route
Letters	First ounce		*	*
	Each add'l ounce [2]			
Cards	Piece			
ZIP + 4 Mail [3]				
Letters	First ounce			
	Pre-barcoded			
	Each add'l ounce [2]			
Cards	Piece			
	Pre-barcoded			
Nonstandard Surcharge [4]				

* For presorted weighing more than 2 ounces, subtract cents per piece.

[1] Presorted First-Class Mail must be presented in a single mailing of at least 500 pieces properly prepared and presorted. The 5-digit presort rate applies only to each piece of a group of ten or more pieces destined for the same 5-digit ZIP code o each piece of a group of 50 or more pieces destined for the same 3-digit ZIP code. The lower carrier route rate applies only t mail presorted to carrier route, with a minimum of 10 pieces per route. A mailing fee of $ must be paid once each year a each office of mailing by any person who mails presorted First-Class Mail. The fee for mailers allows usage of either or both o these rates.

[2] Rate applies through 11 ounces. Heavier pieces are subject to priority mail rates.

[3] ZIP + 4 mail must be properly prepared and submitted in a single mailing of at least 250 pieces, except where the presort minimum of 500 applies. ZIP + 4 rates are not available for carrier route presort mail.

[4] Applies to the first ounce only. Not applicable to ZIP + 4 mail.

RATE SCHEDULE 103—PRIORITY MAIL[1]

Weight not exceeding (pounds)	L.1.2.3	Zone 4	Zone 5	Zone 6	Zone 7	Zone 8
1						
2						
3						
4						
5						
6						
7						
8						
9						
10						
11						
12						
13						
14						
15						
16						
17						
18						
19						
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21						
22						
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24						
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28						
29						
30						
31						
32						
33						
34						
35						
36						
37						
38						
39						
40						

RATE SCHEDULE 103—PRIORITY MAIL[1]—Continued

Weight not exceeding (pounds)	L,1,2,3	Zone 4	Zone 5	Zone 6	Zone 7	Zone 8
41						
42						
43						
44						
45						
46						
47						
48						
49						
50						
51						
52						
53						
54						
55						
56						
57						
58						
59						
60						
61						
62						
63						
64						
65						
66						
67						
68						
69						
70						

[1] Exception: Parcels weighing less than 15 pounds, measuring over 84 inches in length and girth combined, are chargeable with a minimum rate equal to that for a 15-pound parcel for the zone to which addressed.

RATE SCHEDULE 200—SECOND-CLASS MAIL: REGULAR RATE PUBLICATIONS, OUTSIDE COUNTY

	Postage rate unit	Rates [1] (cents)
Per Pound:		
Non-advertising portion:	Pound	
Advertising portion:		
Zone:		
1 and 2	Pound	
3	Pound	
4	Pound	
5	Pound	
6	Pound	
7	Pound	
8	Pound	
Science of Agriculture:		
Zone: 1 and 2	Pound	
Per Piece: Less Editorial Factor of		per each 1% Editorial Content [2]
A—Prepared [3]	Piece	
B—Presorted to 3-digit city/5-digit	Piece	
C—Carrier route Presort	Piece	
SCF Discount [4]		

[1] Charges for second-class regular rate mail are computed by adding the appropriate per-piece charge, including editorial factor, to the sum of the non-advertising portion and the advertising portion charge, as applicable.

[2] For postage calculation, multiply the editorial percent content by and subtract from the applicable piece rate.

[3] Presorted to 3-digit (other than 3-digit city), States, Mixed States.

[4] Applies to mail destinating in the originating SCF area. The discount is subtracted from the applicable piece rate.

Rate Schedule 201—Second-Class Mail: In-County

	Full rate (cents)
Pound-rate matter:	
Per-pound	
Per-piece:	
Presorted to carrier route	
Not presorted to carrier route	

Rate Schedule 202—Full Rates Second-Class Mail: Publications of Authorized Nonprofit Organizations, Outside County

	Postage rate unit	Rate [1] (cents)
Per Pound:		
Non-advertising portion	Pound	
Advertising portion: [2]		
Zone:		
1 and 2	Pound	
3	Pound	
4	Pound	
5	Pound	
6	Pound	
7	Pound	
8	Pound	
Per Piece: Less Editorial Factor of 1% Editorial Content.[3]	per each	
Category A: Prepared i.e. Presorted to 3-digits (except 3-digit city), States, mixed States.		
Category B: Presorted to 3-digit city/5-digit		
Category C: Carrier Route Presort		
SCF Discount.[4]		

[1] Charges for second-class nonprofit mail are computed by adding the per-piece charge to the sum of the non-advertising portion charge and the advertising portion charge, as applicable.

[2] Not applicable to publications containing 10 percent or less advertising content.

[3] For postage calculation, multiply the editorial percent content by and subtract from the applicable piece charge.

[4] Applies to mail destinating in the originating SCF area. The discount is subtracted from the applicable piece charge.

Rate Schedule 203—Full Rates, Second-Class Mail: Classroom Publications, Outside County

	Postage rate unit	Rate [1] (cents)
Per pound:		
Nonadvertising portion	Pound	
Advertising portion:		
Zone:		
1 & 2	Pound	
3	Pound	
4	Pound	
5	Pound	
6	Pound	
7	Pound	
8	Per each	
Per piece: Less editorial factor of 1 percent editorial content [2]	Piece	
SCF discount [3]		

[1] Charges for classroom publications are computed by adding the per-piece charge to the sum of the non-advertising portion charge and the advertising portion charge, as applicable.

[2] For postage calculation, multiply the editorial percent content by and subtract from the applicable piece rate.

[3] Applies to mail destinating in the originating SCF area. The discount is subtracted from the applicable piece charge.

Rate Schedule 300—Third-Class Mail: Single Piece

	Full rates [1] (cents)
Single piece:	
One ounce	
Two ounces	

RATE SCHEDULE 300—THIRD-CLASS MAIL: SINGLE PIECE—Continued

	Full rates [1] (cents)
Three ounces	
Four ounces	
Five and six ounces	
Each additional 2 ounces	
Nonstandard surcharge [2]	
Keys and identification devices:	
First 2 ounces	
Each additional 2 ounces	

[1] When the postage rate computed at the single piece third-class rate is higher than the rate prescribed in the corresponding fourth-class category for which the piece qualifies, the applicable lower fourth-class rate is charged.

[2] Applies only to pieces weighing 1 ounce or less.

RATE SCHEDULE 301—THIRD-CLASS MAIL: REGULAR BULK

	Full rates (cents)
Regular bulk: [1]	
Minimum per piece:	
Required presortation	
Presorted to five-digits	
Presorted to carrier route	
Pound rate:	
Carrier route pieces	(per pound)
Required presortation ¢ per pound plus	(per piece)
Presorted to five-digits ¢ per pound plus	(per piece)
ZIP + 4 mail:	
Minimum per piece:	
Required presortation	
Presorted to five-digits	
Prebarcoded and presorted to five-digits	

[1] A fee of $ must be paid once each year for each bulk mailing permit.

RATE SCHEDULE 302—FULL RATES, THIRD-CLASS: NONPROFIT-BULK MAIL

	Full rates (cents)
Nonprofit bulk: [1]	
Minimum per piece:	
Required presortation	
Presorted to five-digits	
Presorted to carrier route	
Pound rate:	
Carrier route pieces	(per pound)
Required presortation ¢ per pound plus	(per piece)
Presorted to five-digits ¢ per pound plus	(per piece)
ZIP + 4 mail:	
Minimum per piece:	
Required presortation	
Presorted to five-digits	
Prebarcoded and presorted to five-digits	

[1] A fee of $ must be paid once each year for each bulk mailing permit.

RATE SCHEDULE 400—FOURTH-CLASS MAIL: PARCEL POST

Weight in pounds	Local	Zone 1-2	Zone 3	Zone 4	Zone 5	Zone 6	Zone 7	Zone 8
2								
3								
4								
5								
6								
7								
8								
9								

RATE SCHEDULE 400—FOURTH-CLASS MAIL: PARCEL POST—Continued

Weight in pounds	Local	Zone 1-2	Zone 3	Zone 4	Zone 5	Zone 6	Zone 7	Zone 8
10								
11								
12								
13								
14								
15								
16								
17								
18								
19								
20								
21								
22								
23								
24								
25								
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57								
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59								
60								
61								
62								
63								
64								
65								
66								
67								
68								
69								
70								
For intra-BMC parcels, deduct.								
For nonmachinable inter-BMC parcels, add								

RATE SCHEDULE 402—FOURTH-CLASS MAIL: SPECIAL AND LIBRARY RATES

	Full rates (cents)
Special:	
First pound:	
Not presorted	
Presorted to 5-digits [1] [2]	
Presorted to BMC [1] [3]	
Each additional pound through 7 pounds	
Each additional pound over 7 pounds	
Library:	
First pound	
Each additional pound through 7 pounds	
Each additional pound over 7 pounds	

[1] A fee of must be paid once each year for each permit.

[2] For mailings of 500 or more pieces properly prepared and presorted to five-digit destination ZIP Codes.

[3] For mailings of 500 or more pieces properly prepared and presorted to Bulk Mail Centers.

RATE SCHEDULE 405—Fourth-Class Mail: Single Piece Bound Printed Matter [1]

[Dollars]

Rates for Pieces weighing up to (pounds)	Local	Zones 1–2	Zone 3	Zone 4	Zone 5	Zone 6	Zone 7	Zone 8
1.5								
2								
2.5								
3								
3.5								
4								
4.5								
5								
6								
7								
8								
9								
10								
Per piece (dollars)								
Per pound (dollars)								

[1] Includes both catalogs and similar bound printed matter

RATE SCHEDULE 406—FOURTH-CLASS MAIL: BULK BOUND PRINTED MATTER [1]

[Dollars]

Zones	Per-piece	Carrier route [2]	Per pound
Local			
1 and 2			
3			
4			
5			
6			
7			
8			

[1] Includes both catalogs and similar bound printed matter.

[2] Applies to mailings of at least 300 pieces presorted to carrier route as prescribed by the Postal Service.

RATE SCHEDULES 500, 501, 502, AND 503—EXPRESS MAIL RATES

[Dollars]

Postage rate unit (pounds)	Schedule 500 same day airport service	Schedule 501 custom designed	Schedule 502 next day and second day PO to PO	Schedule 503 next day and second day PO to Addressee
½				
1				

RATE SCHEDULES 500, 501, 502, AND 503—EXPRESS MAIL RATES—Continued

[Dollars]

Postage rate unit (pounds)	Schedule 500 same day airport service	Schedule 501 custom designed	Schedule 502 next day and second day PO to PO	Schedule 503 next day and second day PO to Addressee
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
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64				
65				
66				
67				

RATE SCHEDULES 500, 501, 502, AND 503—EXPRESS MAIL RATES—Continued

[Dollars]

Postage rate unit (pounds)	Schedule 500 same day airport service	Schedule 501 custom designed	Schedule 502 next day and second day PO to PO	Schedule 503 next day and second day PO to Addressee
68				
69				
70				
Add:				
$4.00 for each pickup stop.				
$4.00 for each custom designed delivery stop.				

SCHEDULE SS-1—SPECIAL SERVICES: ADDRESS CORRECTIONS

Description	Fee
Per correction	

SCHEDULE SS-2—SPECIAL SERVICES: BUSINESS REPLY MAIL

Description	Fee
Active business reply advance deposit account:	
Per piece	
Pre-barcoded	
Other	
Payment of postage due charges if active business reply mail advance deposit account not used:	
Per piece	
Annual License and Accounting Fees:	
With Advance Deposit Account	
Without Advance Deposit Account	

SCHEDULE SS-4—SPECIAL SERVICES: CERTIFICATES OF MAILING

Description	Fee (in addition to postage)
Individual Pieces:	
Original certificate of mailing for listed pieces of all classes of ordinary mail (per piece).	
Three or more pieces individually listed in a firm mailing book or an approved customer provided manifest (per piece).	
Each additional copy of original certificate of mailing or original mailing receipt for registered, insured, certified and C.O.D. mail (each copy).	
Bulk Pieces:	
Identical pieces of First- and third-class mail paid with ordinary stamps, precanceled stamps, or meter stamps are subject to the following fees:	
Up to 1,000 pieces (one certificate for total number)	
Each additional 1,000 pieces or fraction	
Duplicate copy	

SCHEDULE SS-5—SPECIAL SERVICES: CERTIFIED MAIL

Description	Fee (in addition to postage)
Per piece	

SCHEDULE SS-6—SPECIAL SERVICES: COLLECT ON DELIVERY

Amount to be collected, or insurance coverage desired	Fee (in addition to postage)
$0.01 to $25	
$25.01 to $50	
$50.01 to $100	
$100.01 to $200	
$200.01 to $300	
$300.01 to $400	
$400.01 to $500	
Notice of nondelivery of C.O.D.	
Alteration of C.O.D. charges or designation of new addressee	
Registered C.O.D.	

SCHEDULE SS-8—SPECIAL SERVICES: MONEY ORDERS

Amount	Fee
Domestic:	
$0.01 to $35	
35.01 to 700	
APO–FPO:	
$0.01 to $700	
Inquiry Fee, which includes the issuance of copy of a paid money order	

SCHEDULE SS-9—SPECIAL SERVICES: INSURED MAIL

Liability	Fee (in addition to postage)
$0.01 to $50	
$50.01 to $100	
$100.01 to $150	
$150.01 to $200	
$200.01 to $300	
$300.01 to $400	
$400.01 to $500	

SCHEDULE SS-10—SPECIAL SERVICES: POST OFFICE BOXES AND CALLER SERVICE

A. Semi-annual rental rates for post office boxes. Capacity of post office box (in cubic inches)	To 296	296 to 499	500 to 999	1000 to 1,999	Ov 2,00
Box size	1	2	3	4	5
Group I					
Group II					
Group III [1]					

[1] Payment on annual basis.

Description	Fe
B. Caller Service:	
For caller service (semi-annual)	
For each reserved	
Call number (annual)	

SCHEDULE SS-11a—SPECIAL SERVICES: ZIP CODING OF MAILING LISTS

Description	Fee
Per thousand addresses	

Schedule SS–11b—Special Services: Correction of Mailing Lists

Description	Fee
Per submitted address	
Minimum charge per list corrected	

Schedule SS–11c—Address Changes for Election Boards and Registration Commissions

Description	Fee
Per change of address	

Schedule SS–11d—Mailing List Services

	Fee (cents)
Corrections associated with arrangement of address cards in sequence of carrier delivery:	
Per correction	

When rural routes have been consolidated or changed to another post office, no charge will be made for correction if the list contains only names of persons residing on the route or routes involved.

Schedule SS–12—Special Services: On-site Meter Setting

Description	Fee
On-site meter settings:	
First meter:	
By appointment	
Unscheduled request	
Additional meters	
Checking meter in or out of service per meter	

Schedule SS–13—Special Services: Parcel Air Lift

Description	Fee (in addition to parcel post postage)
Up to 2 pounds	
Over 2 up to 3 pounds	
Over 3 up to 4 pounds	
Over 4 pounds	

Schedule SS–14—Special Services: Registered Mail

Value	Fee (in addition to postage)	
	For articles covered by insurance	For articles not covered by insurance
$0.00 to $100		
$100.01 to $500		
$500.01 to $1,000		
$1,000.01 to $2,000		
$2,000.01 to $3,000		
$3,000.01 to $4,000		
$4,000.01 to $5,000		
$5,000.01 to $6,000		
$6,000.01 to $7,000		
$7,000.01 to $8,000		
$8,000.01 to $9,000		
$9,000.01 to $10,000		
$10,000.01 to $11,000		

SCHEDULE SS-14—SPECIAL SERVICES: REGISTERED MAIL—Continued

Value	Fee (in addition to postage)	
	For articles covered by insurance	For articles not covered by insurance
$11,000.01 to $12,000		
$12,000.01 to $13,000		
$13,000.01 to $14,000		
$14,000.01 to $15,000		
$15,000.01 to $16,000		
$16,000.01 to $17,000		
$17,000.01 to $18,000		
$18,000.01 to $19,000		
$19,000.01 to $20,000		
$20,000.01 to $21,000		
$21,000.01 to $22,000		
$22,000.01 to $23,000		
$23,000.01 to $24,000		
$24,000.01 to $25,000		
$25,000.00 to $1,000,000	$ plus handling charge of $ per $1,000 or fraction over first $25,000.	$ plus handling charge of $ per $1,000 or fraction over first $25,000.
$1,000,000 to $15,000,000	$ plus handling charge of $ per $1,000 or fraction over first $1,000,000.	$ plus handling charge of $ per $1,000 or fraction over first $1,000,000.
Over $15,000,000	Additional charges may be based on consideration of weight, space and value	

SCHEDULE SS-15—SPECIAL SERVICES: RESTRICTED DELIVERY

Description	Fee (in addition to postage)
Per piece	

SCHEDULE SS-16—SPECIAL SERVICES: RETURN RECEIPTS

Description	Fee (in addition to postage)
Requested at time of mailing:	
Showing to whom (signature) and date delivered	
Without another special service-merchandise only	
Showing to whom (signature) and date and address where delivered	
Without another special service-merchandise only	
Requested after mailing: Showing to whom and date delivered	

SCHEDULE SS-17—SPECIAL SERVICES: SPECIAL DELIVERY

Class/weight	Fee (in addition to postage)
First-class and priority mail:	
Not more than 2 pounds	
Over 2 but not over 10 pounds	
Over 10 pounds	
All other classes:	
Not more than 2 pounds	
Over 2 but not over 10 pounds	
Over 10 pounds	

SCHEDULE SS-18—SPECIAL SERVICES: SPECIAL HANDLING

Weight	Fee (in addition to postage)
Not more than 10 pounds	
Over 10 pounds	

SCHEDULE SS-19—SPECIAL SERVICES: STAMPED ENVELOPES

Type	Fee
Single sale	
Bulk (500) #6¾ size:	
Regular	
Window	
Bulk (500) #10 size: [1]	
Regular	
Window	
Multicolor printing (500)	
#6¾ size	
#10 size [1]	
Printing charge per 500 envelopes: [2]	
Minimum order (500 envelopes)	
Order for 1,000 or more envelopes	
Double window (500) #10 size [1]	
Household (50) #6¾ size:	
Regular	
Window	
Household (50) #10 size: [1]	
Regular	
Window	

[1] Includes all sizes greater than #6¾ through #10.

[2] Printing charge for each type of printed envelope.

SCHEDULE SS-20—MERCHANDISE RETURN

Description	Fee
Per transaction	
Shipper must have an advance deposit account	

SCHEDULE 1000—FEES

Description	Dollars
First-class presorted mailing fee	
Second-class mailing fees:	
A. Original entry	
B. Additional entry (all zones)	
Second-class reentry fee	
Second-class registration for news agents	
Third-class bulk mailing fee	
Fourth-class special mail presorted mailing fee	
Authorization to use permit imprint	
Merchandise return (per facility receiving merchandise return labels)	

[50 FR 28144, July 10, 1985; 50 FR 30271, July 25, 1985, as amended at 50 FR 37176, Sept. 12, 1985; 51 FR 8827, Mar. 14, 1986; 51 FR 37019, Oct. 17, 1986; 52 FR 15725, Apr. 30, 1987; 52 FR 19139, May 21, 1987; 52 FR 28140, July 28, 1987; 53 FR 15386, Apr. 29, 1988; 53 FR 23108, June 20, 1988; 53 FR 48641, Dec. 2, 1988; 54 FR 7191, Feb. 17, 1989; 54 FR 11524, Mar. 21, 1989; 54 FR 39527, Sept. 27, 1989; 55 FR 10455, Mar. 21, 1990]

Subpart D—Rules Applicable to Requests for Changes in the Nature of Postal Services

§ 3001.71 Applicability.

The rules in this subpart govern the procedure with regard to proposals of the Postal Service pursuant to section 3661 of the Act requesting from the Commission an advisory opinion on changes in the nature of postal services which will generally affect service on a nationwide or substantially nationwide basis. The Rules of General Applicability in Subpart A of this part are also applicable to proceedings on requests subject to this subpart.

§ 3001.72 Filing of formal requests.

Whenever the Postal Service determines to request that the Commission issue an advisory opinion on a proposed change in the nature of postal services subject to this subpart, the Postal Service shall file with the Commission a formal request for such an opinion in accordance with the requirements of §§ 3001.9 to 3001.11 and 3001.74. Such request shall be filed not less than 90 days in advance of the date on which the Postal Service proposes to make effective the change in the nature of postal services involved. Within 5 days after the Postal Service has filed a formal request for a recommended decision in accordance with this subsection, the Secretary shall lodge a notice thereof with the Director of the Federal Register for publication in the FEDERAL REGISTER.

[38 FR 4330, Feb. 13, 1973, as amended at 51 FR 8827, Mar. 14, 1986]

§ 3001.73 Filing of prepared direct testimony.

Simultaneously with the filing of a formal request for an advisory opinion under this subpart, the Postal Service shall file all of the prepared direct evidence upon which it proposes to rely in the proceeding on the record before the Commission to establish that the proposed change in the nature of postal services is in accordance with and conforms to the policies of the Act. Such prepared direct evidence shall be in the form of prepared written testimony and documentary exhibits which shall be filed in accordance with § 3001.31.

§ 3001.74 Contents of formal requests.

(a) *General requirements*. Each formal request filed under this subpart shall include such information and data and such statements of reasons and basis as are necessary and appropriate to fully inform the Commission and the parties of the nature, scope, significance and impact of the proposed change in the nature of postal services and to show that such change in the nature of postal service is in accordance with and conforms to the policies established under the Act. Detailed data and information and statements of reasons or basis set forth in the Postal Service's prepared direct evidence may be relied upon for purposes of the formal request without restatement therein by reference in the request to the portions of the prepared direct evidence relied upon.

(b) *Specific information*. Subject to the right of the Commission to request additional information, each formal request shall include the following:

(1) A detailed statement of the present nature of the postal services proposed to be changed and the change proposed;

(2) The proposed effective date for the proposed change in the nature of postal services;

(3) A full and complete statement of the reasons and basis for the Postal Service's determination that the proposed change in the nature of postal services is in accordance with and conforms to the policies of the Act.

§ 3001.75 Service by the Postal Service.

Immediately after the issuance of an order or orders by the Commission designating an officer of the Commission to represent the interests of the general public or granting petitions to intervene in a proceeding before the Commission under this subpart, the Postal Service shall serve copies of its formal request for an advisory opinion and its prepared direct evidence upon such officer and the parties permitted to intervene as provided by § 3001.12. Such service shall also be made on persons who have been granted limited participation.

[38 FR 3511, Feb. 7, 1973, as amended at 51 FR 8827, Mar. 14, 1986]

Subpart E—Rules Applicable to Rate and Service Complaints

§ 3001.81 Applicability.

The rules in this subpart govern the procedure with regard to rate and service complaints filed under section 3662 of the Act. The Rules of General Applicability in Subpart A of this part are also applicable to proceedings on such complaints.

§ 3001.82 Scope and nature of complaints.

Interested parties who believe the Postal Service is charging rates which do not conform to the policies set out in the Act, or who believe that they are not receiving postal service in accordance with the policies of such title, may file and serve a written complaint with the Commission in the form and manner required by §§ 3001.9 to 3001.12. The Commission shall entertain only those complaints which clearly raise an issue concerning whether or not rates or services contravene the policies of the Act; thus, complaints raising a question as to whether the Postal Service has properly applied its existing rates and fees or mail classification schedule to a particular mail user or with regard to an individual, localized, or temporary service issue not on a substantially nationwide basis shall generally not be considered as properly raising a matter of policy to be considered by the Commission. The Commission shall, in the exercise of its discretion, decline to entertain a complaint during the period the complainant is continuing to pursue the general subject matter of the complaint before an Administrative Law Judge or the judicial officer of the Postal Service.

[36 FR 396, Jan. 12, 1971, as amended at 37 FR 25027, Nov. 25, 1972]

§ 3001.83 Contents of complaints.

Subject to the right of the Commission to require the furnishing of additional information, each complaint shall include the following information:

(a) The full name and address of the complainant(s);

(b) A full and complete statement of the grounds for such complaint, including specific reference to the postal rates or services involved and the policies to which it is claimed they do not conform;

(c) A list or description of all persons or classes of persons known or believed to be similarly affected by the rates or services involved in the complaint;

(d) A statement of the specific relief or redress requested;

(e) Copies of all correspondence or written communications between the complainant, his agent, representative, or attorney, and the Postal Service or any officer, employee or instrumentality thereof, and which relates to the subject matter of the complaint; provided, however, that any such documents which are a part of a public file in any proceeding before an Administrative Law Judge or the Judicial Officer of the Postal Service need not be included if the complaint states the title, docket reference, nature, current status, and disposition of such proceeding.

[36 FR 396, Jan. 12, 1971, as amended at 37 FR 25027, Nov. 25, 1972]

§ 3001.84 Answers by the Postal Service.

Within 30 days after the filing of a complaint with the Commission (unless more time is allowed under § 3001.85(a)), the Postal Service shall file and serve an answer. Such answer shall be in the form and manner required by §§ 3001.9 to 3001.12, and shall include the following:

(a) Specific admission, denial or explanation of each fact alleged in the complaint or, if the Postal Service is without knowledge thereof, a statement to that effect. Each fact alleged in a complaint not thus specifically answered shall be deemed to have been admitted;

(b) A statement as to the position of the Postal Service on the allegations in the complaint that the rates or service involved are not in accord with the policies of the Act, and the facts and reasons in support of such position;

(c) The position of the Postal Service on the specific relief or redress requested by the complainant, the disposition of the complaint recommended by the Postal Service, including whether or not a hearing should be held, and a statement of any facts and reasons in support of such position.

[36 FR 396, Jan. 12, 1971, as amended at 49 FR 6490, Feb. 22, 1984; 51 FR 8827, Mar. 14, 1986]

§ 3001.85 Informal procedures.

(a) In case of a complaint alleging service not in accordance with the policies of the Act, the Commission, acting through such appropriate Commission employees as the Chairman shall designate, may use correspondence, conferences, or other appropriate informal inquiry methods to define the issues, further the exchange of information and explanations between the Postal Service and the complainant, and facilitate negotiated settlement. On receiving a service complaint, the Commission will give a notice of whether or not it intends to use informal procedures. In either case, it will give the Postal Service such additional time to answer the complaint as is just and appropriate. After expeditiously conducting informal inquiries, it will issue an order summarizing the results. All correspondence and other documents issued by or lodged with the Commission during informal inquiries will be part of the public record of the case.

(b) It shall be the general policy and practice of the Commission to encourage the resolution and settlement of complaints by informal procedures, including correspondence, conferences between the parties, and the conduct of proceedings off the record with the consent of the parties.

[36 FR 396, Jan. 12, 1971, as amended at 49 FR 6490, Feb. 22, 1984; 51 FR 8827, Mar. 14, 1986]

§ 3001.86 Proceedings on the record.

If a complaint is not resolved or settled under informal procedures, the Commission shall consider whether or not, in its discretion, a proceeding on the record with an opportunity for hearing should be held on such complaint. If the Commission has reason to believe that the complaint may be justified and that a hearing may otherwise be appropriate in the exercise of its discretion, the Commission shall issue a notice of proceeding pursuant to § 3001.17, and further formal proceedings shall then be held as appropriate under the Commission's rules in Subpart A of this part.

§ 3001.87 Commission determinations.

If the Commission determines, after the completion of proceedings which provide an opportunity for hearing, that a complaint is justified in whole or in part, the Commission shall issue a recommended decision to the Postal Service if the complaint involves a matter of rates and fees or mail classification and shall render a public report if the complaint involves other matters. The Commission shall notify the complainant, the Postal Service, and any other parties in each complaint proceeding of the action taken or the final disposition of the complaint.

Subpart F—Rules Applicable to the Filing of Testimony by Intervenors

§ 3001.91 Applicability and general policy.

(a) The rules in this Subpart identify those areas in which intervenors in rate and classification proceedings could assist the Commission. Intervenors are free to file any relevant and material evidence which is not unduly repetitious or cumulative.

(b) Intervenors are invited to submit the information specified in § 3001.92 (a) through (1) on a voluntary basis as part of their own direct cases. The Commission's request that intervenors voluntarily file such information is not in derogation of the Commission's and the presiding officer's authority, pursuant to §§ 3001.23 through 3001.28, respecting the provision of such or other information. Intervenors, particularly those making contentions under section 3622(b)(4) of the Act, shall be aware that their failure to provide relevant and material information will be taken into account in determining the weight which the

Commission accords to their arguments and evidence.

(c) All evidence shall be filed in accordance with § 3001.31. The rules of general applicability of Subpart A of this part are also applicable to filings subject to this subpart.

[38 FR 7536, Mar. 22, 1973, as amended at 51 FR 8827, Mar. 14, 1986]

§ 3001.92 Submissions by intervenors.

In addition to any other direct testimony submitted by an intervenor in a rate or classification proceeding, and in addition to further requests for information by the Commission, the Commission requests that the following information be submitted where applicable and where it is within the ability of the intervenor to produce it. If it is alleged that such information is representative of a significant segment of a rate-category of mail or of the users thereof it should be accompanied by a demonstration to that effect.

(a) *Description of intervenor.* A statement as to the nature of the business and operations of the intervenor. If the intervenor is an association, the names of the members of the association and a general description of their business and operations.

(b) *Usage of postal services.* An identification of the extent to and method by which the postal services are used including an estimated itemization of the postage cost by class and rate.

(c) *Intervenor's mailing operations.* A description of the mailing and handling operations of the intervenor for items which are to pass through the Postal Service. Descriptions of premailing operations should include the details as to any special arrangements with the Postal Service. Also, a statement as to the total mail handling costs exclusive of Postal Service payments including a breakdown of such costs by, and identification of, the functions for which the costs are incurred.

(d) *Intervenor's postage costs.* A statement of the relative importance of postage costs to other expenses. An estimated itemization of postage costs by class of mail as related to total operating expenses. If more than one major product is affected by postage costs, data should be presented for each, e.g., each periodical of a firm in the publishing business.

(e) *Financial impact of rate or classification changes.* An estimate of the financial impact of the proposed rate or classification changes on the intervenor, or aggregate data for members of mail user associations, together with details of the basis of estimates and supporting data.

(f) *Absorption/avoidance of rate changes.* An analysis as to the ability or inability of the intervenor to absorb, avoid, or pass on postal rate changes, to customer groups (or advertisers or sponsoring organizations, if any). The analysis should include an analysis of the intervenor's customers' demand for the product of the intervenor's industry.

(g) *Demand for postal services.* An indication of the demand of the intervenor's industry for postal services including an estimate of the elasticity of such demand.

(h) *Competitor operations.* If the intervenor is a competitor of the Postal Service, a definition of the areas of competition between the intervenor and the Postal Service and a demonstration of the intervenor's ability or inability to meet postal competition. Include a brief historical description of the company's operations during the past 5 years, showing growth in each major segment of the company's business and a statement of the current rates and all conditions of service applicable to the portion of the intervenor's operations which is affected by comparable service of the Postal Service. The statement should include data on the costs of the services which the intervenor contends are competitive with services of the Postal Service. The statement of costs should identify by character and amount those attributed to the competitive service and the intervenor's rationale (i.e., cost and pricing hypothesis) for such attribution.

(i) *Impact of rate changes on users' suppliers.* If the intervenor is a manufacturer or supplier of goods or services provided to users of the Postal Service, a statement of the impact on expenses and revenues resulting from postage changes, together with statistical or other accounting data and the reasons supporting such statement.

(j) *Statement of revenues, volumes, costs, and profits.* For all intervenors, a certified statement of the total revenues, costs, and profits for each of the last 5 years together with an estimate of the impact of the proposed postal changes on total revenues, costs, and profits. Also the intervenor's volume of mail passing through the Postal Service (by class and subclass) and the comparable volume of traffic moving by competitive services (or the volume of services performed in competition with the Postal Service, or the volume of materials manufactured for or supplied to the Postal Service or users of the Postal Service). Volume data should be presented for each of the 5 years for which total revenues, costs, and profits are reported. An estimate of the impact on volume resulting from the proposed postal increases should be included.

(k) *User studies of Postal Service.* Any studies of the Postal Service's costs, revenues, or operations which would be of help to the Commission in evaluating the merits of the Postal Service's request.

(l) *Workpapers.* (1) Whenever an intervenor presents evidence it shall accompany such evidence with seven sets of workpapers, five for use by the Commission staff and two which shall be available for use by the public at the Commission offices. Two additional sets shall be delivered to counsel for the U.S. Postal Service.

(2) Workpapers shall contain the data and analyses underlying the submissions, including:

(i) A description of the methods used in collecting, summarizing and expanding the data and a clear indication of how the workpapers relate to the various submissions;

(ii) Summaries of sample data and other data used; and

(iii) Any special studies made.

(3) Workpapers shall be neat and legible.

(4) Workpapers shall include citations sufficient to enable a reviewer to trace any number used but not derived in the associated testimony back to published documents or, if not obtained from published documents, to primary data sources. Citations shall be sufficiently detailed to enable a reviewer to identify and locate the specific data used, e.g., by reference to document, page, line, column, etc. With the exception of workpapers that follow a standardized and repetitive format, the required citations themselves, or a cross-reference to a specific page, line, and column of a table of citations, shall appear on each page of each workpaper. Workpapers that follow a standardized and repetitive format shall include the citations described in this paragraph for a sufficient number of representative examples to enable a reviewer to trace numbers directly or by analogy.

[38 FR 7536, Mar. 22, 1973, as amended at 50 FR 43393, Oct. 25, 1985; 51 FR 8827, Mar. 14, 1986]

Subpart G—Rules Applicable to the Filing of Periodic Reports by the U.S. Postal Service

§ 3001.101 Applicability and general policy.

The rules in this subpart identify reports[1] financial statements and cost analyses which the Postal Service will file with the Secretary of the Commission.

[41 FR 47438, Oct. 29, 1976, as amended at 51 FR 24531, July 7, 1986]

§ 3001.102 Filing of reports.

Each report listed in this section shall be filed with the Secretary of the Commission within two weeks of its presentation for use by postal management unless otherwise noted. The reports and information required to be provided by this subpart need not include matters exempt from disclosure by law. Whenever a specific source is cited in this section, that citation includes any successor or substituted source.

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[1] It is realized that some items, characterized as "reports," are not reports in the true sense of the word since they are not published and heretofore have only been intended for internal use.

(a) *Annual reports.* The following information will be filed by the Postal Service annually.

(1) Cost and Revenue Analysis Report which will identify each change in attribution assumptions from the previous year's report. The Postal Service will file concurrently portions of LIOCATT used in the report, transportation workpapers 31 and 57 and, if changed from the previous year, data collection forms and corresponding training handbooks.

(2) Cost Segments and Components.

(3) City Delivery Information including the number of routes by type, the number of possible deliveries by type, the number of collection boxes and businesses served (120 days from the close of the fiscal year).

(4) Rural Carrier Information including the number of routes by type and miles, stops, boxes served and mail pieces by route type (120 days from the close of the fiscal year).

(5) Civil Service Retirement Fund Deficit Report (2 weeks after release of the Annual Report of the Postmaster General).

(6) Worker's Compensation Report including summary workpapers (2 weeks after release of the Annual Report of the Postmaster General).

(7) Annual Report of the Postmaster General.

(8) Congressional Budget Submission including workpapers. The Postal Service will also file concurrently Summary Tables SE 1, 2 and 6 (coincide with submission to Congress).

(9) Audit Adjustment Vouchers, if any.

(10) Billing determinants, at the level of detail employed in the most recent formal request for a change in rates or fees, except that the filing of billing determinant information for Express Mail, Priority Mail, and parcel post pursuant to this section may be delayed for up to one year.

(b) *Quarterly reports.* The folllowing information will be filed by the Postal Service quarterly:

(1) Revenue, Pieces and Weight by Classes of Mail and Special Services.

(2) Origin/Destination Information Report National Service Index.

(3) Investment Income Statements (60 days from the close of the Quarter, except for the last report for the fiscal year—2 weeks after release of the Annual Report of the Postmaster General).

(c) *Accounting period reports.* The following information will be filed by the Postal Service each accounting period:

(1) Cash Flow Statement (60 days from the close of the Accounting Period, except for the last report for the fiscal year—2 weeks after release of the Annual Report of the Postmaster General).

(2) Summary Financial and Operating Report.

(3) National Payroll Hours Summary.

(4) National Consolidated Trial Balances and the Revenue and Expense Summary.

(d) *Miscellaneous reports.* The following information will be provided by the Postal Service as updated:

(1) Before/After Pay Increase Reports.

(2) Before/After COLA Cost Report.

(3) A master list of publications and handbooks including those related to internal information systems or data collection procedures (when changed).

(4) Notices of Changes in Data Reporting Systems (90 days before implementing changes in data reporting systems).

[51 FR 24531, July 7, 1986, as amended at 54 FR 35495, Aug. 28, 1989]

Subpart H—Rules Applicable to Appeals of Postal Service Determinations To Close or Consolidate Post Offices

SOURCE: 42 FR 10993, Feb. 25, 1977, unless otherwise noted.

§ 3001.110 Applicability.

Rules in this subpart govern the procedure regarding the appeal of a determination of the Postal Service to close or consolidate a post office by patrons of the post office in question. Pursuant to section 404(b) of the Act any decision to close or consolidate a post office must be preceded by 60 days notice to persons served by such post office, the opportunity for such persons to present their views, and a written determination based upon consideration of each of the factors listed in section 404(b)(2) of the Act. This notice must include a provision stating that, pursuant to Pub. L. 94-421, a final Postal Service determination to close or consolidate a post office may be appealed to the Postal Rate Commission at 2000 L Street, NW., Washington, DC 20268, within 30 days after the issuance of a written determination by the Postal Service. The rules of general applicability in Subpart A of this part, which do not relate solely to evidentiary proceedings on the record, are also applicable to proceedings subject to this subpart.

§ 3001.111 Initiation of review proceedings.

(a) *Petition for review.* Review of a determination of the Postal Service to close or consolidate a post office shall be obtained by filing a petition for review with the Secretary of this Commission. Such petition must be received by the Commission within 30 days after the Service has made available to persons served by that post office the written determination to close or consolidate required by 39 U.S.C. 404(b) (3) through (4). The petition shall specify the parties seeking review, all of whom must be persons served by the post office proposed to be closed or consolidated and shall identify the Postal Service as respondent. The Commission encourages parties seeking review to attach a copy of the Postal Service written determination, as the appeal process is thereby expedited. If two or more persons are entitled to petition for review of the same determination and their interests are such as to make joinder practicable, they may file a joint petition for review and may thereafter proceed as a single petitioner.

(b) *Intervention.* A person served by the post office to be closed or consolidated pursuant to the Postal Service written determination under review who desires to intervene in the proceeding, or any other interested person, or any counsel, agent or other person authorized or recognized by the Postal Service as such interested person's representative or the representation of such interested person's recognized group, such as Postmasters, shall file with the Secretary of the Commission and serve upon all parties a petition for leave to intervene in a form prescribed by § 3001.20. The petition shall contain a concise statement of the interest of the moving party and the grounds upon which intervention is sought. A petition for leave to intervene shall be filed within 25 days of the date on which the petition for review is filed. The provisions of § 3001.20 (c) through (f) of Subpart A of this part shall apply to petitions for leave to intervene in review proceedings.

[48 FR 33707, July 25, 1983]

§ 3001.112 The record on review.

The written determination sought to be reviewed or enforced, the conclusions and findings upon which it must be based under section 404(b)(3) of the Act, the notices to local patrons and the evidence contained in the entire administrative record before the Postal Service shall constitute the record on review. The record shall contain all evidence considered by the Postal Service in making its determination and shall contain no evidence not previously considered by the Postal Service.

§ 3001.113 Filing of the record.

(a) *Time for filing of the record by the Postal Service.* The Postal Service shall file the record with the Secretary of the Commission within 15 days after the date on which the petition for review is filed with the Commission. The Commission may shorten or extend the time prescribed above. The Secretary shall give notice to all parties of the date on which the record is filed.

(b) *Composition of the filing.* The Postal Service may file the entire record or such parts thereof as the parties may designate by stipulation filed with the Postal Service. The original papers in the Postal Service proceeding or certified copies thereof may be filed. All parts of the record retained by the Postal Service shall be a part of the record on review for all purposes.

§ 3001.114 Suspension pending review.

(a) *Application.* Application for suspension of a determination of the Postal Service to close or consolidate any post office pending the outcome of an appeal to the Postal Rate Commission shall be made at the time of the filing of a petition for review or of the filing of a petition for leave to intervene in an extant appellate proceeding. The application shall show the reasons for the relief requested and the facts relied upon, and if the facts are subject to dispute the application shall be supported by affidavits or other sworn statements or copies thereof. The applicant must be a person served by the affected post office. Immediate notice of the application shall be given to all parties to the proceeding. The application shall be filed with the Secretary of the Commission.

(b) *Answer and filing of the relevant record by the U.S. Postal Service.* Within 10 days after the application for suspension is filed, the Postal Service shall file with the Secretary of the Commission and serve on the petitioners an answer to the application supported by affidavits or other sworn statements or copies thereof. The Postal Service, within 10 days from the date of filing of the application, shall file with the Secretary such parts of the record as are relevant to the relief sought.

§ 3001.115 Briefs on appeal.

(a) *Participant statement.* Upon the filing of the petition for review of a decision to close or consolidate a post office, the Secretary shall furnish the petitioner with a copy of PRC Form 61, a form designed to permit the appellant to make a concise statement of his or her arguments in support of the petition and the instructions regarding its use. In addition to eliciting this information, the instructions for Form 61 shall provide: (1) Notification that, if the appellant prefers, he or she may file a brief as described in paragraph (b) of this section presenting the arguments, in lieu of completing PRC Form 61; (2) a concise explanation of the purpose of the form; and (3) notification that the completed form, or a brief as described in paragraph (b) of this section, in lieu thereof, must be filed with the Commission not more than 35 days following the date of filing of the petition (which date shall be set forth, as it appears in the Commission's records).

(b) *Appellant's initial brief.* The initial brief of the appellant shall be filed with the Secretary of the Commission and served on all parties 35 days after the filing of the petition for review of a decision to close or consolidate a post office. The brief will be limited in length to 30 pages, typewritten and double spaced, and shall include the following in the order indicated:

(1) A subject index with page references, and a list of all cases and authorities relied upon, arranged alphabetically, with references to the pages where the citation appears (which need not be included in the page count);

(2) A concise statement of the case from the viewpoint of the filing participant;

(3) A clear, concise and definitive statement of the position of the author as to the merits of the determination under review;

(4) A discussion of the evidence, reasons, and authorities relied upon with exact references to the record and the authorities; and

(5) Proposed holding with appropriate references to the record or the prior discussion of the evidence and authorities relied upon, and to the appellate criteria of section 404(b)(5) of the Act.

Briefs before the Commission shall be completely self-contained and shall not incorporate by reference any portion of any other brief, pleading or document. Testimony and exhibits shall not be quoted or included in briefs except for short excerpts pertinent to the argument presented.

(c) *Answering brief of the Postal Service.* The answering brief of the Postal Service shall be filed 20 days after the date designated for filing of the appellant's brief and shall follow the format detailed in paragraph (b) of this section.

(d) *Reply by appellant.* The appellant may file a written response to the brief of the Postal Service 15 days after the date designated for filing of that brief, which shall be strictly limited in content to reply to arguments made by the Postal Service. If presented as a brief, such reply brief shall conform to the format detailed in paragraph (b) of this section.

(e) *Intervenor statements or briefs.* An intervenor shall file its brief within the time allowed for initial and reply, or answering, briefs, as appropriate. The Secretary shall furnish to each intervenor a copy of PRC Form 61 as soon as intervenor status is granted. If the intervenor chooses to file a brief, the brief shall follow the format detailed in paragraph (b) of this section.

[42 FR 10993, Feb. 25, 1977, as amended at 48 FR 33707, July 25, 1983]

§ 3001.116 Oral argument.

Oral argument will be held in these appeal cases only when a party has made a showing that, owing to unusual circumstances, oral argument is a necessary addition to the written filings. Any request for oral argument shall be filed within 7 days of the date on which reply briefs are due. If a request for oral argument is granted, it will be held at the Postal Rate Commission's offices at 2000 L Street NW., Suite 500, Washington, DC 20268.

[48 FR 33708, July 25, 1983]

§ 3001.117 Posting of documents by Postal Service for inspection by affected postal patrons.

In all proceedings conducted pursuant to this Subpart H, the Postal Service shall cause to be displayed prominently, in the post office or offices serving the patrons affected by the determination to close or consolidate a post office which is under review, a copy of the service list and all pleadings, notices, orders, briefs and opinions filed in such proceedings. Failure by the Postal Service to display prominently any such document shall be deemed sufficient reason to suspend the effectiveness of the Postal Service determination under review until final disposition of the appeal.

[42 FR 10993, Feb. 25, 1977. Redesignated at 48 FR 33708, July 25, 1983]

PART 3002—ORGANIZATION

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APPENDIX A

AUTHORITY: 84 Stat. 759, 39 U.S.C. 3603; Freedom of Information Act, 5 U.S.C. 552, 81 Stat. 54.

§ 3002.1 Purpose.

This part is published in compliance with 5 U.S.C. 552(a)(1) and constitutes a general description of the Postal Rate Commission.

[36 FR 21994, Nov. 18, 1971]

§ 3002.2 The Commission and its offices.

(a) The Commissioners. The Postal Rate Commission is an independent establishment of the executive branch of the U.S. Government created by the Postal Reorganization Act (84 Stat. 719, Title 39, U.S.C.). The Commission consists of five Commissioners appointed by the President and confirmed by the Senate, one of whom is designated as Chairman by the President.

(b) The Chairman and Vice-Chairman. The Chairman has the administrative responsibility for assigning the business of the Commission to the other Commissioners and to the offices and employees of the Commission. He/She has the administrative duty to preside at the meetings and sessions of the Commision and to represent the Commission in matters specified by statute or executive order or as the Commission directs. The Commission shall elect annually a member of the Commission to serve as Vice-Chairman of the Commission for a term of one year or until a successor is elected. In case of a vacancy in the Office of the Chairman of the Commission, or in the absence or inability of the Chairman to serve, the Vice-Chairman, unless otherwise directed by the Chairman, shall have the administrative responsibilities and duties of the Chairman during the period of vacancy, absence, or inability.

[48 FR 13167, Mar. 30, 1983]

§ 3002.3 Administrative Office.

(a) The incumbent head of the office is responsible for exercising two executive functions of the Commission and utilizes the title of either "Secretary" or "Chief Administrative Officer", as appropriate.

(b) As Secretary of the Commission, the incumbent head shall have custody of the Commission's seal, the minutes of all action taken by the Commission, its rules and regulations, its administrative and other orders, and records. All orders and other actions of the Commission shall be authenticated or signed by the Secretary or any such other person as may be authorized by the Commission.

(c) As Chief Administrative Officer the incumbent head is also responsible, subject to the policy guidelines of the Commission, for: Development, implementation, and administration of the Commission's financial management system and accounting activities including those relating to the budget and the payroll; development and administration in conjunction with the Personnel Officer of a personnel program designed to meet the needs of the Commission and its employees; development and administration, subject to the supervision of the Chairman, of a public information program appropriate to the agency mission; provision of facilities and operating and support services essential to the efficent and effective conduct of operations; acquisition, planning and assignment of office space; procurement and supply; serving as the contracting officer for the Commission and controlling the obligation of Commission funds, as authorized by the Commission.

(d) The personnel management functions set out above are the immediate responsibility of the Personnel Officer, whose position is located in the Administrative Office.

[48 FR 13167, Mar. 30, 1983]

§ 3002.4 Office of Technical Analysis and Planning.

(a) The Office of Technical Analysis and Planning is responsible for technical (as opposed to legal) analysis and the formulation of policy recommendations for the Commission.

(b) This office provides the analytic support to the Commission for reviewing the record of rate and classification requests, post office closings and other issues which come before the Commission. The functional areas of expertise within this office are:

(1) The economic analysis of the market for postal services including the alternative sources for such services and the users of the service;

(2) The analysis of the operational characteristics of the postal system and its interface with various segments of the economy; and,

(3) The analysis of the costs of operating the Postal Service and how such costs are influenced by the operational characteristics.

(c) These functional activities are combined in the evaluation of the revenue requirements of the Postal Service under possible alternative operating circumstances for the purpose of developing rate structures. They are also used to evaluate the impact of various proposed changes to the Domestic Mail Classification Schedule and the consequences of these changes upon the mailers and upon the revenue requirements and rate structure of the Postal Service.

(d) The office also collects, analyzes and periodically summarizes financial and various other statistical information for use in its ongoing activities and for the development of future methods, techniques and systems of analysis and reporting.

[48 FR 13168, Mar. 30, 1983]

§ 3002.5 Office of Administrative Law Judges.

The Office of Administrative Law Judges is responsible for discharging the functions and exercising the powers of such Administrative Law Judges as the Commission may from time to time employ, in hearings, and in accordance with the provisions of sections 556 and 557 of the Administrative Procedures Act (5 U.S.C. 556 and 557).

[48 FR 13166, Mar. 30, 1983]

§ 3002.6 Office of the General Counsel.

The General Counsel directs and coordinates the functions of the Office of the General Counsel and is directly responsible for the counseling and advisory services set forth in 39 CFR 3000.735-203. In accordance with § 3001.8 of the rules of practice, the General Counsel does not appear as an attorney in hearings in any proceeding before the Commission and takes no part in the preparation of evidence or argument presented in such hearings. The General Counsel represents the Commission in court proceedings and performs legal research on issues coming before the Commission; advises the Commission on the legal aspects of proposed legislation and rulemaking, the legal aspects of proposed action and policies on procurement, contracting, personnel matters, and other internal legal questions.

[48 FR 13168, Mar. 30, 1983]

§ 3002.7 Office of the Consumer Advocate.

(a) The Office of the Consumer Advocate provides representation for the interests of the general public in Commission proceedings. The office prepares and litigates before the Commission legal and evidentiary presentations in all formal Commission dockets under Chapter 36 of Title 39, U.S. Code. It also is responsible for maintaining a continuing litigation capability including preparation for consideration of issues likely to reflect the interests of the general public in subsequent proceedings.

(b) The head of this office is responsible for directing both legal and technical personnel to fulfill its functions. The office includes both litigation attorneys and a broad spectrum of technical expertise to analyze and evaluate the diverse economic, cost and market issues before the Commission. During the pendency of a proceeding, personnel serving in the Office of the Consumer Advocate are prohibited from participating or advising as to any intermediate or Commission decision in that proceeding pursuant to the Commission Rules of Practice.

(c) A policy statement regarding the Office of the Consumer Advocate is contained as Appendix A to this part.

[48 FR 13168, Mar. 30, 1983]

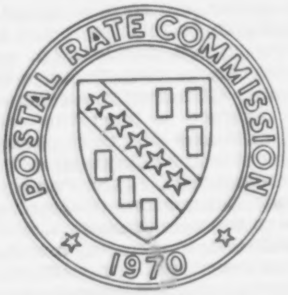
§ 3002.8 Official seal.

(a) *Authority.* The Seal described in this section is hereby established as the official seal of the Postal Rate Commission.

(b) *Description.* (1) On a white disc within a blue border with inner and outer rims gold and inscribed at top POSTAL RATE COMMISSION and in base, between two small five-pointed stars, 1970, all in gold, the shield of the coat of arms in full color blazoned as follows:

> Five blue stars on a white stripe running from the upper left to the lower right of the shield, with three white billets on each of the upper and lower sections of the shield, the former blue and the latter red.

(2) The official seal of the Postal Rate Commission is modified when reproduced in black and white and when embossed, as it appears in this section.



(c) *Custody and authorization to affix.* (1) The seal is the official emblem of the Postal Rate Commission and its use is therefore permitted only as provided in this part.

(2) The seal shall be kept in the custody of the Secretary and is to be used to authenticate records of the Postal Rate Commission and for other official purposes.

(3) Use by any person or organization outside of the Commission may be

made only with the Commission's prior written approval. Such request must be made in writing to the Secretary.

[39 FR 2481, Jan. 22, 1974. Redesignated at 42 FR 3646, Jan. 19, 1977, and 48 FR 13168, Mar. 30, 1983]

APPENDIX A

(The following policy statement regarding the Office of the Consumer Advocate (formerly Office of the Officer of the Commission) was adopted by the Commission and published at 47 FR 25523, June 14, 1982.)

1. The officer of the Commission appointed under 39 U.S.C. 3624(a) shall be appointed from the Office of the Consumer Advocate and shall assist, using the means and procedures available to parties before the Commission, to develop a complete and accurate record by:

(a) Identifying information or data that are needed in addition to those presented by other parties;

(b) Identifying inaccuracies or fallacies in submitted data or information; and

(c) Sponsoring relevant and material evidence which presents needed data or information, which critiques record evidence, or which supports proposals of the officer or other participants not inconsistent with Commission precedents and judicial decisions reviewing Commission precedents. The preceding shall not preclude the officer from offering testimony on a methodology which the Commission has previously considered but not adopted, if a fair reading of the Commission opinion(s) concerned shows that such methodology offers potential benefits and new data are available to remedy any defects cited by the Commission.

2. To argue for equity on behalf of the general public and principally those segments of the general public who are not otherwise represented in PRC proceedings. In so doing, the officer shall consider both long and short term consequences.

3. During the course of proceedings the officer, in accordance with Commission rules, shall maintain complete independence from the members of the Commission and the agency's advisory staff.

[48 FR 13168, Mar. 30, 1983]

PART 3003—PRIVACY ACT RULES

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AUTHORITY: Privacy Act of 1974 (Pub. L. 93-579), 5 U.S.C. 522a.

SOURCE: 40 FR 38154, Aug. 27, 1975, unless otherwise noted.

§ 3003.1 Purpose and scope.

This part is published in compliance with the Privacy Act of 1974 (Pub. L. 93-579). It establishes procedures, consistent with the purposes of the Act, by which individuals may safeguard their privacy by obtaining access to, and requesting amendments or corrections in, information about them which is under the Commission's control.

§ 3003.2 Definitions.

For purposes of this part:

(a) "Commission" means The Postal Rate Commission.

(b) "Act" means the Privacy Act of 1974 (Pub. L. 93-579).

(c) "Individual" means a citizen of the United States or an alien lawfully admitted for permanent residence.

(d) "Maintain", used with reference to a record means to collect, to use, to disseminate, to have control over and responsibility for such record.

(e) "Record" means any item, collection or grouping of information about an individual that is maintained by the Commission and that is retrievable by his or her name or an identifying particular, such as a number, symbol, fingerprint, or photograph, of the individual. Information maintained by the Commission includes but is not limited to, education, financial transactions, medical history, employment history and criminal history.

(f) "Routine use" means, with respect to the disclosure of a record, the use of such a record for a purpose which is compatible with the purpose for which it was collected. The routine uses of record systems maintained by the Commission were established pursuant to notice in the FEDERAL REGISTER.

(g) "System of records" means a group of any records under the control of the Commission from which information about an individual is retrievable by his or her name or by some identifying particular.

§ 3003.3 Procedures for requests pertaining to individual records in a record system.

(a)(1) An individual who wishes to know whether a system of records maintained by the Commission contains a record or records pertaining to him or her shall file a written inquiry to this effect with the Chief Administrative Officer of the Commission at the Commission's business address. The request shall clearly state on the outside of the envelope and in the body that it is a Privacy Act request.

(2) The Chief Administrative Officer shall respond within 10 days of receipt of such an inquiry (exclusive of Saturdays, Sundays, and legal holidays) informing the individual whether a system of records maintained by the Commission contains such a record or records.

(b) After an accounting of disclosures has been kept, an individual may request an accounting of disclosures of his or her record or records made within the immediately preceding year, except for those made:

(1) To those officers and employees of the Commission who have a need for the record in the performance of their duties;

(2) Required under the Freedom of Information Act (5 U.S.C. 552);

(3) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the Commission specifying the particular portion desired and the law enforcement activity for which the record is sought.

Such a request shall be addressed in writing to the Chief Administrative Officer.

(c)(1) An individual who desires to gain access to any record pertaining to him or her contained in a system of records maintained by the Commission shall file a written request with the Chief Administrative Officer at the Commission's business address.

(2) The written request shall state whether the individual intends to appear in person at the Commission's offices or whether he desires to receive a copy of the record or records pertaining to him or her through the mails.

§ 3003.4 Times, places, and requirements for identification of individuals making requests.

(a) An individual appearing in person pursuant to paragraph (c) of § 3003.3, shall:

(1) Appear at the Commission's business offices between the hours of 8 a.m. and 4:30 p.m. on any day except Saturdays, Sundays, and legal holidays;

(2) Present suitable identification, such as a driver's license, employee identification card, or Medicare card;

(3) If accompanied by another individual of his or her choosing, provide a written statement authorizing discussion of his or her record in the presence of the accompanying individual.

(b) An individual who files a request through the mails pursuant to paragraph (c) of § 3003.3 of this part shall include his or her date of birth and other suitable proof of identity, such as a facsimile of a driver's license, employee identification card, Medicare card.

[40 FR 38154, Aug. 27, 1975, as amended at 41 FR 52455, Nov. 30, 1976]

§ 3003.5 Disclosure of requested information to individuals.

An individual who has filed a request in accordance with § 3003.4 shall be permitted to review the record or records pertaining to him or her and to have all or any portion thereof copied. Review of Commission records pursuant to § 3003.4(a) will be conducted in the presence of a representative of the Commission.

§ 3003.6 Special procedures: medical records.

An individual who requests access to records containing medical information about himself or herself shall provide the Chief Administrative Officer with the name of a licensed medical practitioner. If in the Chief Administrative Officer's judgment transmission of the medical information to the individual could have an adverse effect upon him or her, the information will be transmitted directly to the named medical practitioner.

§ 3003.7 Request for correction or amendment to record.

(a) An individual may request that a record or records pertaining to him or her be amended or corrected. Such requests shall be submitted in writing to the Chief Administrative Officer at the Commission's business address.

(b) An individual requesting amendment of a record or records pertaining to him or her shall furnish suitable identification, as provided in § 3003.4(a)(2) and (b).

(c) A request for amendment shall contain an exact description of the item or items sought to be amended and specific reasons for the requested amendment.

§ 3003.8 Agency review of request for correction or amendment of record.

(a) Within 10 days (excluding Saturdays, Sundays, and legal holidays) after receipt of a request to amend a record, the Chief Administrative Officer shall transmit to the requester a written acknowledgment of receipt of the request. Such an acknowledgment may, if necessary, request any additional information needed to make a determination on the request. No acknowledgment is required if the request can be reviewed, processed, and the individual notified of compliance or denial within the ten-day period.

(b) The Chief Administrative Officer shall promptly review the record upon receipt of a request for amendment thereof.

(c) If the Chief Administrative Officer determines that the requested amendment is appropriate to insure that the record is:

(1) Relevant and necessary to accomplish the purposes of Chapter 36 of Title 39, U.S.C.; and

(2) As accurate, timely and complete as is reasonably necessary to assure fairness to the requester, the Chief Administrative Officer shall:

(i) Change the record accordingly;

(ii) Advise the requester that the change has been made and transmit a copy of the revision to him or her; and

(iii) After an accounting of disclosures has been kept pursuant to 5 U.S.C. 552a(c), advise all previous recipients of the record of the fact that the amendment was made and the substance of the amendment.

(d) If, after review of the record, the Chief Administrative Officer determines that the requested amendment is not in conformity with the requirements of the Act, he shall:

(1) Advise the requester in writing of such determination, together with the specific reasons therefor; and

(2) Inform the requester that further review of the request by the Chairman of the Commission is available if a written request therefor is made.

§ 3003.9 Appeal of initial adverse agency determination on correction or amendment.

(a) Within 30 days (excluding Saturdays, Sundays, and legal holidays) of receipt of a written request for review pursuant to § 3003.8(d)(2), the Chairman shall make an independent review of the record, using the criteria of § 3003.8(c) (1) and (2). If the Chairman determines that the record should be amended in accordance with the request, the Chief Administrative Officer shall:

(1) Change the record accordingly;

(2) Advise the requester that the change has been made; and

(3) After an accounting of disclosures has been kept pursuant to 5 U.S.C. 552a(c), advise all previous recipients of the record of the fact that

the amendment was made and the substance of the amendment.

(b) If the Chairman, after independent review, determines that the record should not be amended in accordance with the request, the Chief Administrative Officer shall advise the requester:

(1) Of the determination and the reasons therefor;

(2) Of his or her right to file with the Chief Administrative Officer a concise statement of his or her reasons for disagreeing with the refusal to amend the record;

(3) That the record will be annotated to indicate to anyone subsequently having access to it that a statement of disagreement has been filed, and that the statement will be made available to anyone to whom the record is disclosed;

(4) That the Chairman and the Chief Administrative Officer may, in their discretion, include a brief summary of their reasons for refusing to amend the record whenever such disclosure is made;

(5) That any prior recipients of the disputed record will be sent a copy of the statement of disagreement, after an accounting of disclosures has been kept pursuant to 5 U.S.C. 552a(c);

(6) Of his or her right to seek judicial review of the refusal to amend the record, pursuant to 5 U.S.C. 552a(g)(1)(A).

§ 3003.10 Disclosure of record to person other than the individual to whom it pertains.

Commission employees or officers who have possession of or access to individuals' records may be subject to criminal penalties pursuant to 5 U.S.C. 552a(i)(1) for disclosure thereof without the prior written consent of the individuals to whom the records pertain unless disclosure is:

(a) To those officers and employees of the Commission who have a need for the record in the performance of their duties;

(b) Required under the Freedom of Information Act (5 U.S.C. 552);

(c) For a routine use as defined in § 3003.2(f);

(d) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13;

(e) To a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(f) To the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the U.S. Government, or for evaluation by the Administrator of General Services or his designee to determine whether the record has such value;

(g) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency which maintains the record has made a written request to the Commission specifying the particular portion desired and the law enforcement activity for which the record is sought;

(h) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;

(i) To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

(j) To the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office; or

(k) Pursuant to the order of a court of competent jurisdiction.

§ 3003.11 Fees.

There shall be no charge for the first copy of any records furnished pursuant to §§ 3003.5 and 3003.6. Additional copies will be charged at the cost of reproduction.

§§ 3003.12—3003.13 [Reserved]

§ 3003.14 Specific exemptions.

The Postal Rate Commission has not established any system of records to be exempted from the provisions of §§ 3003.3, 3003.4, 3003.5, 3003.6, 3003.7, 3003.8, 3003.9, and 3003.11 of this part.

[41 FR 52455, Nov. 30, 1976]

FINDING AIDS

A list of CFR titles, subtitles, chapters, subchapters and parts and an alpha- etical list of agencies publishing in the CFR are included in the CFR Index and inding Aids volume to the Code of Federal Regulations which is published sep- rately and revised annually.

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(Revised as of June 29, 1990)

The Director of the Federal Register has approved under 5 U.S.C. 552(a) and 1 CFR Part 51 the incorporation by reference of the following publications. This list contains only those incorporations by reference effective as of the revision date of this volume. Incorporations by reference found within a regulation are effective upon the effective date of that regulation. For more information on incorporation by reference, see the preliminary pages of this volume.

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International Mail Manual, (most recent amendment published in the Federal Register on May 9, 1990).	20.1
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39 CFR 10.2 Availability of International Mail Manual
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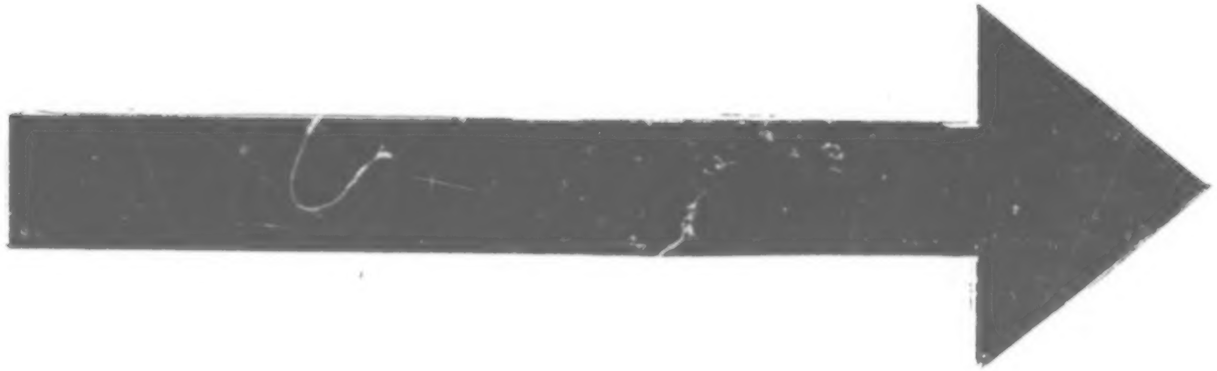

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